

Limited Liability Partnership Act, 2008 (LLP Act)

Introduction

With the growth of Indian economy, the role played by its entrepreneurs as well as its technical and professional manpower has been acknowledged internationally. In this background, a need was felt for a new corporate form that would provide an alternative to the traditional partnership which exposes its partners to unlimited personal liability and a statute based governance structure of limited liability companies.

Need

At present, under partnership law, the maximum numbers of partners a partnership firm can have is twenty also the partners are liable jointly and severally and most importantly their liability is unlimited which means that the personal property of the partners can also be attached for the satisfaction of the debts, in addition to the capital contributed by the partners in the firm. This is the principal reason why partnerships firms of professionals have not grown in size to meet the challenges posed today. Not only are the firm's assets completely liquidated under the standard principles of the partnership law, but the partners are also jointly and severally liable for the entire liabilities of the partnership. Thus, the present system acts as a deterrent for the growth and expansion of service based organizations.

Object of Limited Liability Partnership Act, 2008 [LLP]

Limited Liability Partnership [LLP] is viewed as an alternative corporate business vehicle that provides the benefits of the limited liability but allows its members the flexibility of organizing their internal structure as a partnership based on a mutually arrived agreement. LLP form is expected to enable entrepreneurs, professionals and enterprises providing services of any kind or engaged in scientific and technical disciplines, to form commercially efficient vehicles suited to their requirements. With this background, Limited Liability Partnership Act, 2008 [LLP Act] was enacted on January 7, 2009. Subsequently, Government of India [GOI] notified various provisions of LLP Act on 31st March 2009. GOI has, on April 1, 2009, also notified the Limited Liability Partnership Rules, 2009 [LLP Rules] in respect of registration and operational aspects under the LLP Act.

The salient features of the Limited Liability Partnership Act, 2008, are as follows:-

- (i) **Body corporate-** The LLP shall be a body corporate and a legal entity separate from its partners.
- (ii) **Mutual rights and duties of partners-** The mutual rights and duties of the partners of the LLP inter se and those of the LLP and its partners shall be governed by an agreement between the partners inter se or between the LLP and the partners subject to the provisions of the Act. The Act provides flexibility

to devise the agreement as per their choice. In the absence of any such agreement, the mutual rights and duties shall be governed by the provisions of the Act.

- (iii) **Separate legal existence-** The LLP will be a separate legal entity, liable to the full extent of its assets, with the liability of the partners being limited to their agreed contribution in the LLP. No partner would be liable on account of the independent or unauthorised actions of other partners or their misconduct. The liabilities of the LLP and its partners who are found to have acted with intent to defraud creditors or for any fraudulent purpose shall be unlimited for all or any of the debts or other liabilities of the LLP.
- (iv) **Minimum partners-** Every LLP shall have at least two partners and shall also have at least two individuals as Designated Partners, of whom at least one shall be resident in India.
- (v) **Accounts-** The LLP shall be under an obligation to maintain annual accounts reflecting true and fair view of its state of affairs. A statement of accounts and solvency shall be filed by every LLP with the Registrar every year. The accounts of LLPs shall also be audited, subject to any class of LLPs being exempted from this.
- (vi) **Limited Liability-** The liability of a partner of a LLP is limited up to his agreed contribution to the LLP.
- (vii) **Perpetual succession-** A LLP is a legal entity with perpetual succession.
- (viii) **Conversion-** A firm, private company or an unlisted public company would be allowed to be converted into a LLP in accordance with the provisions of the act.
- (ix) **Winding up-** The winding up of the LLP may be either voluntary or by the Tribunal to be established under the Companies Act, 2013. Till the Tribunal is established, the power in this regard has been given to the High Court.
- (x) **Non-applicability of the Indian Partnership Act, 1932-** The Indian Partnership Act, 1932 shall not be applicable to LLPs.

KEY DEFINITION:

- a) **"Body Corporate"** is defined to mean a company as defined under the Companies Act, 2013 and includes LLP, LLP incorporated outside India, a foreign company but does not include a corporation sole, a registered co-operative society and any other body corporate notified by the Central Government (not being a company defined under the Companies Act, 2013 or LLP defined under LLP Act).
- b) **"Business"** includes every trade, profession, service and occupation.
- c) **"Financial Year"**, in relation to LLP, means the period from 1st April of a year to the 31st March of the following year. However, in case of LLP incorporated after 30th September, financial year may end on 31st March of the year next following that year.

- d) **"Foreign Limited Liability Partnership"** means a LLP formed, incorporated or registered outside India which establishes a place of business within India.
- e) **"Limited Liability Partnership"** means a partnership formed and registered under LLP Act.
- f) **"Limited liability partnership agreement"** means any written agreement between the partners of LLP and between the LLP, which determines the mutual rights and duties of the partners and their rights and duties in relation to that LLP.
- g) **"Partner"** in relation to LLP means a person who becomes a partner in a LLP in accordance with the LLP agreement.

DESIGNATED PARTNERS [SECTION 7]

- LLP shall have at least two "designated partners" who are individuals and at least one of them shall be "resident in India".
- In case one or more of the partners of a LLP are bodies corporate, at least two individuals who are partners of such LLP or nominees of such bodies corporate shall act as "designated partners"
- **Note:** "Resident in India" means a person who has stayed in India for minimum 182 days during the immediately preceding 1 year.
- Designated partner is responsible for compliance with the provisions of LLP Act.
- Designated Partner is required to obtain Designated Partner Identification Number [DPIN] from the Central Government.
- Application for allotment of DPIN needs to be submitted online on the LLP website along with the necessary proof duly attested and certified as prescribed.

INCORPORATION OF LLP [SECTIONS 11 TO 21] Procedure for incorporation of LLP is similar to the procedure for incorporation of a company under the Companies Act, 2013.

- Applicants are first required to file the application for reservation of name with the Registrar of Companies [ROC].
- Once the name applied is approved by the ROC, the documents for incorporation of LLP need to be filed.
- Name of every LLP shall end with the words "Limited Liability Partnership" or "LLP".
- Name which is undesirable or nearly resembles to that of any other partnership firm or LLP or anybody corporate or trade mark, is not allowed.
- Any entity (body corporate/registered partnership firm) which has a name similar to the name of LLP which has been incorporated subsequently may seek change of name of such LLP through ROC within 24 months from date of registration of such LLP.

- No person shall carry on business under any name/title which contains the words "Limited Liability Partnership" or "LLP" without duly incorporating it as LLP under the LLP Act.
- LLP is required to file with the ROC, the LLP agreement ratified by all the partners within 30 days of incorporation of LLP.

PARTNERS AND THEIR RELATIONS AND EXTENT OF LIABILITY [SEC 22 TO 31]

- Mutual rights and duties of partners and LLP, shall be governed by an agreement between the partners, or agreement between the LLP and its partners.
- In absence of any such agreements, the mutual rights and duties shall be governed by the LLP Act.
- Every partner of a LLP is, for the purpose of the business of LLP, the agent of LLP, but not of other partners
- LLP, being a separate legal entity, shall be liable to the full extent of its assets whereas the liability of the partners of LLP shall be limited to their agreed contribution in the LLP.
- LLP is not bound by anything done by a partner in dealing with a person if –
 - The partner in fact has no authority to act for the LLP in doing a particular act;
 - The person knows that he has no authority or does not know or believe him to be a partner of the LLP.
- LLP is liable if the partner of a LLP is liable to any person for wrongful act/omission on his part in the course of business of LLP/with its authority. Obligation of LLP whether arising in contract or otherwise, shall solely be the obligation of LLP.
- Liabilities of LLP shall be met out of properties of LLP.
- Partner is not personally liable for the obligations of LLP solely by reason of being a partner of LLP.
- No partner is liable for the wrongful act or omission of any other partner of LLP, but the partner will be personally liable for his own wrongful act or omission.
- The liability of the LLP and partners who are found to have acted with intent to defraud creditors or for any fraudulent purpose shall be unlimited for all or any of the debts or other liabilities of the LLP.
- Cessation of a partner on grounds like resignation, death, dissolution of LLP, declaration that a person is of unsound mind, declared/applied to be adjudged as insolvent etc. will not be effective unless –
 - The person has notice that the partner has ceased to be so; or

— Notice of cessation has been delivered to ROC. The notice of cessation may be filed by the outgoing partner if he has reasonable cause to believe that LLP has not filed the said notice.

CONTRIBUTION BY PARTNER [SECTIONS 32 AND 33]

- A contribution of a partner to the capital of LLP may consist of any of the –
 - Tangible, movable or immovable property
 - Intangible property
 - Other benefit to the LLP including money, promissory notes, contracts for services performed or to be performed.The obligation of a partner for the contribution shall be as per the LLP agreement.
Creditor, which extends credit or acts in reliance on an obligation described in the LLP agreement, without the notice of any compromise made between the partners, may enforce the original obligation against such partner.

AUDIT/FINANCIAL DISCLOSURES [SECTIONS 34 AND 35]

- LLP shall maintain the prescribed books of accounts relating to its affairs on **cash or accrual basis** and according to the **double entry system** of accounting.
- The accounts of every LLP are required to be audited, except in following situations:
 - When turnover does not exceed Rs. 40,00,000/- in any financial year; or
 - Where contribution does not exceed Rs. 25,00,000/-Central Government has powers to exempt certain class of LLP from requirement of compulsory audit.
- LLP are required to file following documents with the ROC –
 - Statement of Account and Solvency, within 30 days from the end of 6 months of the financial year;
 - Annual return within 60 days from the end of the financial year.

ASSIGNMENT & TRANSFER OF PARTNERSHIP RIGHTS [SEC.42]

- The rights of a partner to a share of the profits and losses of the LLP and to receive distribution in accordance with the LLP agreement are transferable, either wholly or in part.
- However, such transfer of rights does not cause either disassociation of the partner or a dissolution and winding up of the LLP.
- Such transfer of right, shall not, by itself entitle, the assignee or the transferee to participate in the management or conduct of the activities of the LLP or access information concerning the transactions of the LLP.

FOREIGN LLP [SECTION 59 AND RULE 34]

- On establishment of a place of business in India, foreign LLP shall file prescribed documents for registration with ROC within 30 days of the establishment in India.
- Any alteration in the constitution documents, overseas principle office address and partner of foreign LLP are required to be filed with the ROC in the prescribed form within 60 days of the close of the financial year.
- Any alteration in the certificate of registration of foreign LLP, authorized representative in India and principle place of business in India are required to be filed with the ROC in the prescribed form within 30 days of alteration.
- Foreign LLP ceasing to have a place of business in India, are required to give notice to ROC in the prescribed form within 30 days of its intention to close the place of business and from the date of such notice, the obligation of
- Foreign LLP to file any document with the ROC shall cease, provided it has no other place of business in India and it has filed all the documents due for filing as on the date of the notice.

GENERAL PARTNERSHIP

Liability of partners unlimited.

Partners jointly and severally liable.

Partnership firms are neither body corporate nor do they have perpetual succession and legal entity.

Registration of partnership is not mandatory.

Partnership cannot have more than 20 partners.

LLP

Liability of partners limited to contribution.

Partners not liable for act of other partners.

LLP is a body corporate having perpetual succession and legal entity.

Incorporation of LLP is mandatory.

LLP can have more than 20 partners.

COMPANY

Incorporation procedure comparatively complex than LLP.

Management structure usually complex – shareholders do not ordinarily participate in day to day management.

Capital structure relatively less flexible than LLP.

Elaborate provision relating to redressal in case of oppression and mismanagement.

Complex statutory compliance requirements.

LLP

Incorporation procedure relatively simple and expeditious.

Flexible management structure – Partners are entitled to participate in management.

Flexible capital structure.

No provision relating to redressal in case of oppression and mismanagement.

Limited statutory compliances as compared to Companies.

WINDING-UP OF LLP [SECTIONS 63 AND 64]

LLPs may be wound-up either voluntarily or by NCLT. LLP may be wound up by NCLT if –

- LLP decides to wound up by NCLT;
- Number of partners is reduced below 2 for a period of more than 6 months;

- LLP is unable to pay its debts;
- LLP has acted against the interests of the sovereignty and integrity of India, the security of the State or public order;
- LLP has defaulted in filing Statement of Account and Solvency or annual return with the ROC for 5 consecutive financial years; or
- NCLT is of the opinion that it is just and equitable that the LLP be wound up.

In January 2010, MCA had notified that certain provisions relating to winding-up of a company under the Companies Act, 2013 will also be applicable to a LLP.

The notification also provides details of modification in the provisions of the Companies Act relating to winding up for its applicability to winding up of LLP under the LLP Act.

Subsequently, on 30 March 2010, issued Limited Liability Partnership (Winding up and Dissolution) Rules, 2010.

Merits of LLP

- 1) Renowned and accepted form of business worldwide in comparison to Company.
- 2) Easy to form or easy to establish and low cost of formation.
- 3) Body Corporate (Separate Legal Entity)
- 4) Limited Liability
- 5) Perpetual Succession
- 6) Flexible to manage i.e. easy to manage and run.
- 7) Easy transferable ownership
- 8) Capacity to sue
- 9) Lesser compliances
- 10) No requirement of any minimum capital contribution.
- 11) No restrictions as to maximum number of partners.
- 12) LLP & its partners are distinct from each other.
- 13) Partners are not liable for Act of partners.
- 14) Less Compliance level.
- 15) No exposure to personal assets of the partners except in case of fraud.
- 16) Less requirement as to maintenance of statutory records.
- 17) Less Government Intervention.
- 18) Easy to dissolve or wind-up.
- 19) Professionals can form Multi-disciplinary Professional LLP, which was not allowed earlier.
- 20) Audit requirement only in case of contributions exceeding Rs. 25 lakh or turnover exceeding Rs. 40 lakh.

Demerits of LLP

- 1) Any act of the partner without the other partner, may bind the LLP
- 2) Under some cases, liability may extend to personal assets of partners.
- 3) Cannot raise money from Public.