

# Limited Liability Partnership: An Effective Alternative to Complexity of Incorporation and the Personal Risks Associated with Partnership Law

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**Abstract**—Earlier, the types of business model which mainly operated were basically companies, sole proprietorship, and partnership. Each of these business models has various issues regarding their tax regimes and how they operate. This issue was basically solved by the introduction of Limited Liability Partnership which basically would fill the gap between two business models i.e. Partnership and sole proprietorship. Limited Liability Partnership not only fosters as an alternative to these business models but it also caters the way for other small and medium enterprises and professional firms of Company Secretaries, Chartered Accountants, Advocates etc. to conduct their business/profession efficiently which would in turn increase their global competitiveness. A limited liability partnership (LLP) is a hybrid corporate business vehicle that has a perpetual succession and separate legal entity. It not only provides the benefits of limited liability but also allows its partners the flexibility of organizing their internal structure as a general partnership. As a hybrid business entity, the LLP combines the limited liability features of companies with the operational flexibility of partnerships. This paper basically discusses how Limited Liability Partnership can be used in other ventures of business and how it removes the faults in other business ventures such as Company and Partnership.

## **Index Terms**— Limited Liability Partnership

### I. INTRODUCTION

In general partnership, there is a greater risk when a claim exceeds the sum of the assets of the partnership. In that case the partners have to cover the claims from their own personal assets, hence we can say that ‘unlimited liability’ of partners has been the chief reason why partnership firms of professionals, have not grown in size to successfully meet the challenges posed today by international competition. In Limited Liability Partnership, the partners can adopt whatever type of internal organization then prefer with the surety of having their liability limited to a certain value and it won't go more than that.

The idea that there should be the opportunity in India to organize as an LLP emerged out of the Report of the Naresh Chandra Committee on Regulation of Private Companies and Partnership and Report of the Expert Committee on Company

Law (Dr. J. J. Irani Committee). The Limited Liability Partnership Act 2008 was published in the official Gazette of India on 9 January 2009 and has been in effect since 31 March 2009. However, only limited sections of the Act have been ratified. Rules of the Act were published in the official Gazette on 1 April 2009 and amended in 2017. The first LLP was incorporated on 2 April 2009. The main reason provided by the committee for the introduction of Limited Liability Partnership in India is the risk involved in other ventures of business and how it will be useful as an enhanced global competitive advantage to Indian professionals like lawyers, accountants, doctors, architects, and company secretaries.

### *A. Need for Limited Liability Partnership over other business model*

For quite a while, a need has been felt to accommodate a business organization that would join the adaptability of an organization and the upsides of constrained risk of an organization at a low consistence cost. The Limited Liability Partnership design is an option corporate business vehicle that gives the advantages of constrained obligation of an organization however permits its individuals the adaptability of arranging their interior administration based on a commonly arrived assention, just like the case in a partnership firm. This organization would be very valuable for little and medium undertakings when all is said in done and for the endeavors in administrations segment specifically. Universally, LLPs are the favored vehicle of business especially for benefit industry or for exercises including experts. A LLP is comparable in some approaches to a standard Partnership, aside from that the individual individuals have bring down liabilities to any obligations which may emerge from maintaining the business. There are more authoritative obligations included contrasted with the Partnership business structure.

Truth be told, a LLP is more like working a Limited Company. As far as obligation, the Limited Liability Partnership is itself subject for obligations keep running up in maintaining the business, rather than the individual individuals from the LLP. Therefore, LLP's are suggested revenue driven

running organizations. People or existing organizations can be individuals from a Limited Liability Partnership, and the LLP must have no less than 2 individuals. The rights and duties of all individuals would typically be spread out in a "Deed of Partnership". The LLP would commonly choose an "Assigned Member" who might be in charge of keeping up correspondences with Companies House, getting ready records and representing the LLP if for reasons unknown it is broken down sometime later. It is a form of business entity, which allows individual partners to be restricted from joint liability of partners in a partnership firm. The Liability of the partners incurred in the normal course of business is that of LLP and it does not extend to the personal assets of the partners. This is a great relief to the partners, particularly professionals like Company Secretaries, Chartered Accountants, Cost Accountants, Advocates and other professionals. These experts may likewise frame multi-disciplinary LLPs to meet the changing financial condition. The mixture structure of LLP will encourage business visionaries, specialist co-ops and experts to sort out and work in an imaginative and productive way for adequately contending in the worldwide market.

Basically as Limited liability partnership is a very new concept a lot of people who want to start a business do not have an idea of how it functions so instead they try to form another business model which is to form a company without even having any idea of what risk they have to bare in the course of their business. Various Entrepreneurs starting another business are intrigued about the examination between a Private Limited Company versus LLP. The two components offer various practically identical features required to run a little too huge estimated business, while in like manner differing obviously on particular points of view. The ways in which Limited liability Partnership can be preferred over a Private limited Company are explained below:

The Private Limited Company Registration process and the LLP Registration process are fundamentally the same as with a few contrasts in the archives and structures being petitioned for fuse. The means for fuse of a Private Limited Company are:

1. Acquiring Digital Signature Certificate (DSC) for the proposed Directors,
2. Acquiring Director Identification Number (DIN) for the proposed Directors,
3. Getting name endorsement from MCA and
4. Petitioning for consolidation.

LLP enlistment likewise has a comparative procedure:

1. Getting Digital Signature Certificate (DSC) for the proposed Partners,
2. Acquiring Director Identification Number (DIN) / Designated Partner Identification Number (DPIN) for the proposed Partners,
3. Acquiring name endorsement from MCA and
4. Petitioning for joining.

Both Private Limited Company and LLP are enlisted with the

Ministry of Corporate Affairs and are issued a Certificate of Incorporation. The preparing time for fuse of a private constrained organization and LLP are additionally similar with the two substances going up against normal around 20 days to fuse. The Government expense for consolidation of a LLP is fundamentally less expensive when contrasted with the Government charge for fuse of a Private Limited Company. LLPs have been acquainted with address the issues of private ventures and consequently LLP appreciate bring down government charge for joining. Additionally, the quantity of records that must be imprinted on Non-Judicial Stamp Paper and Notarized is lesser for LLP enlistment when contrasted with that of a Private Limited Company enrollment.

Assessment compliances are comparative for both private restricted organization and LLP. Notwithstanding, with regards to consistence identifying with the Ministry of Corporate Affairs, LLP appreciates huge points of interest. A LLP does not must have its records inspected if the yearly turnover of the LLP is under Rs.40 lakh and the capital commitment is under Rs.25 lakh. A LLP would anyway need to document LLP Form 8 and LLP Form 11. A private restricted organization then again would need to document yearly return inspected monetary proclamations with the Ministry of Corporate Affairs every year.

Limited Liability Partnership profits the advantages of the Partnerships with higher preference. Nature of Simplicity of exchange is flawless in the LLP and its recognized position in Corporate World places a LLP in much more worthwhile position than a Partnership. Not really everybody ought to settle on a LLP but rather the person who are searching for long haul development and will bounce into corporate world without confronting the high confinement caused if there should arise an occurrence of Companies, the individual may favor LLP thinking about its preferences and detriments.

The Limited Liability Partnership Act, 2008 is acknowledgment of the changing needs of the business condition in the present period. The joining of the LLPs will give a supportive new alternative to new companies like proficient associations which are on edge about their presentation to risk. In perspective of the development of Indian Service industry lately, startup LLPs would additionally add to the development of the administration business and an expansive number of existing organizations, open and additionally private, are relied upon to change over into LLPs with a view to approach the advantages of the LLP. Encourage the Government of India has made an Endeavor to make an encouraging domain for business visionaries, specialist co-ops and experts by conveying such half and half business structure to meet the worldwide rivalry.

#### *B. How 'risk factor' is removed by Limited Liability Partnership*

The main drawback from an economic perspective in other ventures of business is that there is a lack of managerial skills and capital, so such an organization is unsuitable for not only

small but for all kinds of business. In order to economies of scale it is better for individuals to pool in their resources for their partnership. Risk is therefore primarily shared between the partners, although creditors and employees will be exposed, especially in the unlikely event of event that the partners will have insufficient private assets to pay off the debts of the business. However, the main initiative has been to press changes for changes in law, either by making liability proportionate to blame or to limit the liability of partners in professional terms.

### *C. How Limited Liability Partnership is used in various kinds businesses*

For new companies, association is a standout amongst the most widely recognized types of association to begin business. It gives a window to synergize endeavors and capital without any difficulty to set up a supportable business. Until 2008, any association framed in India suggested boundless obligation for the accomplices. This implies if there should be an occurrence of failure of the business to reimburse obligation, your own advantages might be utilized to reimburse obligation and settle money related commitments.

Despite the fact that for new businesses this hazard is constantly natural, a requirement for securing interests and bolster enterprise was perceived by JJ Irani Committee (2005) that suggested introducing Limited Liability Partnerships in India. We quote - "In view of the potential for growth of the service sector, requirement of providing flexibility to small enterprises to participate in joint ventures and agreements that enable them to access technology and bring together business synergies and to face the increasing global competition enabled through WTO, etc., the formation of Limited Liability Partnerships (LLPs) should be encouraged. In 2008, the lawmaking body affirmed Limited Liability Partnership Act. This demonstration gives the two experts (CA/CS/CWA/Doctors/Architects/Engineers/Lawyers, and so forth.) and non-proficient people chance to seek after a business as an organization enmeshed with adaptability of an association firm.

### *D. How Limited Liability Partnership can be used in the legal profession*

Lawyers will always be personally liable for their own acts stems from the general theory that actors are always responsible personal actions even when carried out as agents. At last, morals rules restricting legal counselors in each locale deny attorneys from endeavoring to tentatively shield their own against liability. Therefore, with regards to a law office, the term obligation" can mean insurance from

- i. Individual risk for business obligations of the firm, for example, bank advances, PC buys, office leases;
- ii. Individual obligation for torts inconsequential to the training or
- iii. Vicarious risk for misbehavior or other unfair acts by those with whom the legal advisor.

Lawyers were historically prohibited from practicing law in the corporate form. This prohibition was largely based upon the premise that the practice of law, as a learned and noble profession, was not an appropriate or lawful business in which a corporation could engage. In many cases, the courts have unequivocally or, by their quietness, verifiably enabled legal counselors to appreciate restricted risk to the full degree allowed by the expert enterprise resolution. Court rules and legal choices in a couple of locales, in any case, have expressed that attorneys can't shield themselves from vicarious individual obligation for proficient misbehavior by shaping proficient corporations. When a lawyer holds himself out as a member of a law firm the lawyer will be liable not only for his own professional misdeeds but also for those of the other members of the firm. They make no distinction between partnerships and professional corporations in this respect. Lawyers cannot allow a corporate veil to hang from the cornices of professional corporations which engage in the law practice.

The professional nature of the law practice and its obligations to the public interest require that each lawyer be civilly responsible for his professional acts. A lawyer's relationship to his or her client is a very special one. So also is the relationship between a lawyer and the other members of his or her firm a special one. When a client engages the services of a lawyer the client has the right to expect the fidelity of other members of the firm. It is inappropriate for the lawyer to be able to play hide and seek in the shadows and folds of the corporate veil and thus escape the responsibilities of professionalism.

## II. CONCLUSION

LLP Act of 2008 is silent regarding taxation of LLP under the income tax act. At international level, however LLPs are treated as a pass through entity and accordingly, income taxed is levied on partner and not on LLP. It is relevant to note that the Concept Paper on LLPs prepared by the Ministry of Corporate Affairs had recommended that LLPs should also be given a pass through status. Though the LLP is a separate entity distinct from its partner and have many similarities and benefits of a body corporate, still one of the lacunas of the act is that, it cannot come out with its IPO and raise money from the public which a company can easily do.

There are various advantages in LLP like unlimited capacity separate legal entity, the cost for incorporating it is very low, it is very different from its partners, and liability is limited to a certain limit which has been promised to them. The administration likewise being adaptable that it tends to be represented just by an assent between accomplices. Basically it conjoins distinct features of a company with that of partnership.

Basically the LLP display can possibly viably go about as a motor of development for the financial improvement of nation and is probably going to cultivate the development of expert administrations in the nation. LLP, as another plan of action, will support joint endeavors and make Indian administrations

universally better globally.

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