



Limited Liability Partnership: An Emerging Business form for Entrepreneurs

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ABSTRACT

Partnership is an association of two or more persons engaged in business and sharing both the costs and profits. Normally each partner is jointly liable with the partnership for the obligations of the partnership. The degree of liability protection is taken into consideration when deciding how to structure business. The choice then lies between creating a Limited Liability Company or a Limited Liability Partnership. Though both provide personal liability protection to a certain degree but differences exist between the two in terms of liability protection, taxation, ownership etc. LLP on the one hand provides the business the benefit of a limited liability whereas on the other hand it allows the members the flexibility of organizing their management based upon a mutually arrived agreement just like that seen in the case of a partnership firm. LLPs have now become a preferred choice for businesses especially for service industry or for those activities that involve professionals. LLP does not differ much from a standard partnership but for the advantage of the individual members having lower liabilities to any debts that may arise while running a business. But in LLP there is an increase in administrative duties than those while running a Partnership business. The primary aim of this paper is to discuss the basic concept of LLP and the manner in which it differs from the other businesses. As we know that primary goal of the Limited Liability Partnerships is to boost the entrepreneurship among the small and medium sector business enterprises and to convert them into a systematic form of business organization. Therefore in the present paper attempt has been made to discuss how LLP model as present in India is beneficial to the SMEs and the entrepreneurs.

Keywords-- Liability, requirements, Partnership, enterprises

Partnership still remained the preferred choice of a number of small trading and business enterprises, especially the professionals in India as well as abroad. Gradually this form of business became less preferred mainly due to the partners being under unlimited liability. Limited liability, allowing members the flexibility to organize the business internal structure based on a mutually arrived agreement, proved to be an alternative corporate business vehicle. This form of partnership enabled the entrepreneurs to provide services of any kind and form commercially efficient vehicles suited to their requirements. The Limited Liability Partnership is a corporate form that differs from a joint stock company set up under the Companies Act, 1956 and a partnership firm set up under the Partnership Act 1932. LLPs were formed under the Limited Liability Partnership Act of 2008 that provides entrepreneurs the benefit of a separate legal entity, together with organizational flexibility and non cumbersome disclosure requirements. The universally recognized LLP form of business organization was introduced in India through the Limited Liability Partnership Act, 2008. Such Limited Liability Partnerships were created for the purpose of supporting the small scale industries and service sector enterprises. Thus LLP, being a Body Corporate formed and registered under the LLP Act 2008, which gives the flexibility to a partnership firm. It is to be organized and operated on the basis of an agreement known as "LLP Agreement" and shall have the following characteristics:

- Perpetual succession
- Capacity and power of suing and being sued
- Capacity to buy and sell property in its own name
- Common seal

I. INTRODUCTION

One of the oldest forms of business relationships is Partnership. Partnership is the relation between persons who have agreed to share profit of business carried on by all or any of them acting for all. Over a period of time it was noticed that though in most businesses Partnership was being replaced by LLC but

II. HISTORY OF LLP IN INDIA

The concept of LLP originated in the United States, Louisiana being the first state to adopt it. Other states followed suit. The first Limited Partnership Act in the United States was adopted by New York in 1822 that was copied largely from the then-extant French statute.

Though the LLP structure in India is broadly based on the LLP statutes of U.K. and Singapore modified to suit the Indian scenario but it is diametrically different from that of the LLP structure in the adopted by the U.S. Hence it is but natural that in order to understand the necessity for an LLP structure in India we need to have a brief insight into the history of the legislation of U.S and U.K.

1957: The idea to introduce the concept of a LLP in India was first floated in 1957. The suggestion was made to the Law Commission which rejected it at that time due to the inherent shortcomings of the LLPs which might weaken the provisions of the Companies Act, 1956 which were recently made stricter.

1997: The Abid Hussain Committee on Small Scale Industries recommended legislation on LLP in India

2003: The need to re-introduce starting LLPs in the service industry was made in the Naresh Chandra Committee Report in 2003. According to the report the service industry, in a legal perspective, was a hybrid between a company and a partnership and much closer to the private company form.

2005: J. J. Irani Expert Committee on Company Law, in 2005, recommended the enacting of LLP as a law through a separate legislation for LLPs in India. It also recommended the need for extending the scope of LLPs to the small enterprises.

23rd July 2005: In a scenario of ever increasing litigious market environment, unlimited liability was felt by the 2nd Naresh Chandra Committee to be a major as a reason for members shying away from joining partnerships. It felt unlimited liability to be the chief reason why the firms of professionals, such as accountants, have not grown in size to successfully meet the challenge of the international competition. This makes an L.L.P a most attractive vehicle for partnership among professionals such as lawyers and accountants. As a result, on November 2, 2005, the Ministry of Company Affairs introduced a concept paper on LLPs

with a view to stimulate a public debate over idea, which finally led to the promulgation of the proposed Limited Liability Partnership Bill, 2006.

2006: The Bill was introduced in the Rajya Sabha on 15th December, 2006 and referred to the Standing Committee on Finance, which permitted the creation of a new type of corporate entity, the LLP.

2008: After being passed in the Upper House on October 24, 2008, the Bill was tabled in the Lok Sabha, which also passed the Bill without any changes.

2009: On January 7, 2009, the LLP Bill received the assent of the President and was thereafter notified in the Official Gazette in 2009, and the LLP Act was put into force by the Central Government on March 31, 2009. The LLP Rules were made effective by the Central Government from April 1, 2009. The Ministry of Corporate Affairs also issued two notifications on July 5, 2011 and November 4, 2011 amending the LLP Rules.

III. OBJECTIVE OF THE PAPER

We know that the primary goal of the Limited Liability Partnerships is to boost the entrepreneurship among the small and medium sector business enterprises and to bring them in systematic form of business organization. Therefore in the present paper attempt has been made to discuss:

- The basic concept of LLP and the manner in which it differs from the other businesses.
- How LLP model as present in India is beneficial to the SMEs and the entrepreneurs.

Research Methodology

For the purpose of the present study the secondary data has been used. The necessary material is collected from different web-sites, books and journals.

IV. DIFFERENCE BETWEEN PARTNERSHIP FIRM, COMPANY AND LLP

Basis of Difference	Partnership Firm	Company	LLP
Registration Requirement	Optional.	Compulsory with the registrar of companies.	Compulsory with the registrar of LLP.
Separate legal entity	No	Separate legal entity from members under Companies Act, 2013	Separate legal entity from partners under LLP Act, 2008.
Common Seal	No	Yes. It denotes the signature of the company and every company shall have its own common seal [now made optional by virtue of The Companies (Amendments) Act, 2015]	May have its own common seal that is dependent upon the terms of the Agreement.
Number of partners or members	Minimum 2 and maximum 20 in case of ordinary business whereas maximum limit is 10 in case of banking business.	2 to 200 members in case of Private Company. Minimum 7 members in case of Public Company	Minimum 2 whereas there is no limit to maximum number of partners
Formation cost	Negligible	Minimum Statutory fee for	Minimum cost of

		incorporation of Private Company is Rs.6,000/- and minimum Statutory fee for incorporation of Public Company is Rs. 19,000/-	Formation of LLP is Rs. 800 only, comparatively much lesser than the cost of formation of Company
Ownership on assets	Partners have joint ownership of all the assets belonging to partnership firm	The company independent of the members has ownership of assets	The company independent of the members has ownership of assets

V. BENEFITS TO SMES

The J.J Irani Committee found LLP as the most suited partnership vehicle among the professionals who are already regulated such as company secretaries, chartered accountants, cost accountants, lawyers, architect, engineers, doctors, etc. The Naresh Chandra Committee was tasked to “suggest a scientific and rational regulatory environment, the hallmark of which is the quality, rather than the quantity, of regulation”. The recommendation made by this Committee is a step towards modernization and recognizing the needs of the changing times and on the basis of these recommendations. The LLP Act provides adequate support and protection to small and medium enterprises (SMEs), which till date have not been able to avail the benefits of a corporate structure. Until 2008, the SME sector largely worked through the regular partnership or proprietorship structures, wherein the partners and sole proprietor, as the case may be, were personally liable for all liabilities of the business vehicle. Not only does the legislation provide benefits of corporate structure, it does away with the limitations and problems of proprietorship and the regular partnership structure. However, the LLP Act provides the opportunity to SMEs to convert their business vehicles to a LLP. Thus the liability of business vehicle could not be tagged and made personal liability of partners constituting it. Though the Industrial Policy of 1948 provided special protection to small and medium enterprises by compelling the banks and financial institutions to offer loans, though of a lesser amount, still it became difficult for such enterprises to raise adequate funds. However, by forming an LLP, it might become easier for SMEs to get loans as security creation will get easier. This is because a LLP would be a separate entity altogether than the partners who constitute it. Banks and financial institutions will be able to enforce the securities created while granting the loans specifically as the LLP can be sued being a separate legal entity. As SMEs have limited capital, their main focus is to keep the running cost at the bare minimum. The major chunk of these costs are relating to accounting and compliance requirements which are very less when it comes to LLP. The LLP model benefits the SMEs in many other ways, which are as follows:

VI. NO MINIMUM CAPITAL CONTRIBUTION REQUIRED

Though setting up a PLC required a minimum capital of Rs. One Lac LLP on the other hand could be formed without any minimum capital contribution. Furthermore contributions could be made in installments that would benefit the small/startups.

VII. LOW FORMATION COST

The cost of registering LLP is low as compared to cost of incorporating a private limited or a public limited company.

VIII. SEPARATE LEGAL ENTITY

LLP has its separate existence from its partners. LLP can sue and be sued in its own existence. Due to its status, the entry and exit of the partners don't affect the LLP.

IX. LIMITED LIABILITY

LLP is quite safe as compared to the unlimited liability that offered by partnership firm as the liability of each partner is limited to the extent of his/her contribution/share. On the other hand, in case of the sole proprietorship or the traditional partnership firm, in the event of a failure of the business the personal assets of proprietor or partners could be at risk.

X. LOWER COMPLIANCE BURDEN RESULTING IN SAVINGS

Limited Liability Partnership is required to file only the Annual Return & a Statement of Accounts & Solvency whereas at least 8 to10 compliances per annum are required to be made by a private limited company.

XI. NO REQUIREMENT OF COMPULSORY AUDIT

All limited companies, whether private or public, irrespective of their share capital, are required to get their accounts audited. But in case of LLP, there is no such mandatory requirement. This is perceived to be a significant compliance benefit. A limited liability partnership is required to get the audit done only in the case that:

- i. The contribution of the LLP exceeds Rs. 25 lakhs, or
- ii. The annual turnover of the LLP exceeds Rs. 40 lakhs.

XII. BOARD MEETINGS

The minimum requirements of holding four mandatory Board Meetings once a year as required by the Companies Act is not applicable in LLP. The partners can meet as per their convenience or need basis. Partners can specify about the meetings details & schedule in the LLP agreement.

XIII. NO LIMIT ON OWNERS OF BUSINESS

Though it is mandatory for an LLP to have a minimum of two partners and no ceiling on the maximum limit the PLC, on the other hand, cannot have more than 200 members.

XIV. TAXATION

Another main benefit of incorporation is the taxation of a LLP. LLP are taxed at a lower rate as compared to PLC. Moreover, LLPs are also not subject to Dividend Distribution Tax as compared to PLC. Thus there will not be any tax while distribution of profit to your partners.

XV. ECONOMIC & WORKING

Statutory filing fees as well as the cost of formation is less compared to forming a Private limited company. Apart from stamp duty for executing LLP agreement the registration fees is less than that required for incorporation for a Private Limited company. There is no compulsion for Partners to hold four mandatory Board Meetings a year as required by the Companies Act. The partners can meet as per their convenience or need basis. Partners can specify about the meetings details & schedule in the LLP agreement.

XVI. CONCLUSION

The LLP Act is a boon to the SMEs and entrepreneurs as it helps them to control their running cost, since they already have limited capital at their disposal. In case a need arises for funds the LLP will not raise the same from the Public. Instead funds can be raised from a section of inactive co-partners of an enterprise whose liability to repay debts of the business will be limited to their investment and who will be entitled to a share in the profits of the business. While the limited partnership business will give a greater level of comfort to banks and other lenders to small businesses, it at the same time will avoid the enormous amount of documentation and strict procedure that corporate entities have to observe.

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