Incorporating a Limited Liability Partnership

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Why LLP?

- What makes a LLP different from a traditional partnership?
- Is LLP a kind of misnomer given that the features of LLP resembles a company?
- What is the nature of liability of the members of a LLP? Who is the regulating authority of LLPs in India?
- What are the laws that regulate the various aspects of a LLP in India and what are its background?
- How is the governance of a LLP different from that of a OPC?

Objective of LLP Act, 2008

- Ministry of Corporate Affairs noted the following as the main objects of this legislation
  - With the growth of the Indian economy, the role played by its entrepreneurs as well as its technical and professional manpower has been acknowledged internationally.
  - It is felt opportune that entrepreneurship, knowledge and risk capital combine to provide a further impetus to India’s economic growth.
  - In this background, a need has been felt for a new corporate form that would provide an alternative to the traditional partnership, with unlimited personal liability on the one hand, and, the statute-based governance structure of the limited liability company on the other.
  - It’ll enable professional expertise and entrepreneurial initiative to combine, organise and operate in flexible, innovative and efficient manner.
  - to give push to the small/medium enterprises (SMEs) and startups

LLP - a brief history

Global:-

- originated in Texas in 1991 in unincorporated form, inspired by government litigation against law and accounting firms that had done work for failed savings and loan associations.
- The claims were against all partners including many who had nothing to do with the failed associations, highlighting the joint and several liability of partners for each other's conduct.
- The prospect that all the members in a partnership of attorneys or accountants may be exposed to hundreds of millions of dollars in liability was a strong incentive for the development of mechanisms to limit the vicarious liability of partners.
- The LLP is the device developed to accomplish that objective.

India:-

- 1932, a concrete suggestion was made by Iron, Steel and Hardware Merchant's Chamber of India that partnership with limited liability should be recognised in India either by a special enactment or as a part of the Partnership Act, 1932
- two or three partners used to find it convenient to register a private limited company and carry on the work.
- many restrictions on taking loans by the directors or shareholders even in private limited companies that people will prefer to enter into a partnership instead of forming a limited liability company. The risk can only be minimised by introducing limited liability partnership
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Major committees on LLP

1972

The Bhatt Committee in 1972;

1992

Naik Committee in 1992;

1997

Expert Committee on Development of Small Sector Enterprises headed by Sh. Abid Hussain in 1997;

2001

Study Group on Development of Small Sector Enterprises (SSEs) headed by Dr S.P. Gupta in 2001;

2003

Naresh Chandra Committee Report in 2003

- highlighted the grave need to introduce LLPs in the service industry, which finally succeeded in launching the concepts of LLPs in India;

2005

J.J. Irani Expert Committee on Company Law in 2005

- recommended to enact a separate legislation for LLPs in India, and also to extend the scope of LLPs to the small enterprises

Features of LLP

- Sec. 2(1)(*n*) of LLP Act 2008 defines a LLP as "an incorporated partnership formed and registered under the Act"
- Limited Liability Partnership of LLP as the name suggests signifies, the hybrid body corporate which enjoys both the benefits of a partnership as well that of a company
- Salient Features of LLP:
  - **Body Corporate**
  - **Separate Legal Entity**
  - **Artificial Legal Person**
  - **Perpetual Succession**
  - **Limited Liability**
  - **No Mutual Agency**
  - **LLP Agreement**
  - **Lawful Business** (*for profit only*)
  - **Change in the Partners**
  - **Non-applicability of the Indian Partnership Act**
  - **Conversion into LLP (only** a firm, private company or an unlisted public company allowed to convert)
  - **Foreign LLPs (**can become a partner in an Indian LLP**)**

Partners and their Liabilities in LLP

- S. 2(q) of the LLP Act, 2008 defines a ‘partner’ as one who becomes a partner in the LLP in accordance with the LLP agreement.
- any person who subscribes her name in the incorporation document of an LLP is a partner of the LLP (S. 22. Act 2008)
- A body corporate is capable of becoming a partner
- The Ministry of Corporate Affairs through its notification dated July 5, 2011, has integrated the Director’s Identification Number (‘DIN’) issued under the Companies Act with the Designated Partner Identification Number DPIN, with effect from July 9, 2011
- Designated partners, similar to a *nominated director* of a company, are **those partners who are responsible for ensuring adherence and compliance with the LLP Act and the LLP Rules**
- The internal management of a company is governed by statute, primarily the Companies Act, 1956 whereas an LLP is regulated by a contractual agreement similar to a partnership agreement (S. 23 Act 2008)

Partners and their Liabilities in LLP

- S. 26, Act 2008, every partner becomes an agent of the LLP but not of the other partners.
- S. 27(2) (3) and (4), Act 2008 states that any act of a partner done in the normal course of business or with the authority of the LLP is binding on the LLP, including any wrongful act or omission and has to be met out of the assets of the LLP
- S. 27(1) Act 2008 states that where the partner lacks authority to act on behalf of the LLP and the third party with whom the partner is dealing knows that he has no authority, or does not know or believe him to be a partner of the LLP the liability of the LLP does not extend. As per S. 28 in such cases the liability of the partners is not limited to their contribution to or interest in the LLP, but is the personal liability of the partner. The other partners, however, are not personally liable.
- As per S. 30 of Act 2008, in case of any fraudulent activity, the liability of the partner who acted with intent to defraud and of the LLP, if the act was committed with the knowledge and authority of the LLP, is unlimited
- **As per S> 31 whistle-blowing mechanism is in place whereby** the interests of a partner will be legally protected if they provide useful information during an investigation that is relevant for the disposal of that proceedings