LIMITED LIABILITY PARTNERSHIP- AN OVERVIEW OF THE NEW CONCEPT

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The unlimited liability in case of Traditional partnership firms and jugglery of statutory requirements and formalities of the Companies , a new concept of LLP i.e. Limited Liability partnerships have been developed in recent years and now a bill has been moved in the Rajya Sabha on 21st Oct 2008 in this respect. Let us have a look at this relatively new concept which will open field for small and medium joint ventures especially in professional and technical fields.

1.THE PURPOSE AND NEED

The need for the "Limited Liability Partnership" is felt since last some years and this concept was first came into real picture in 2006 when first bill in this respect was introduced in the Rajya Sabha . Later it was referred to standing committee on finance and now after getting the report and incorporating the most of the suggestions of the Hon. Committee the same has been presented to Rajya Sabha as Limited Liability partnership Bill 2008.

The purpose of the concept is to provide an alternate platform to the small and medium entrepreneurs to combine their efforts without getting into the complex formalities of the Companies and unlimited liability concept of the traditional partnerships.

2.THE CONCEPT

The partners in the case of Limited Liability partnerships will be liable to the act of the firms but not for the acts of the other partners. Let us have a look at the proposed clauses of the bill to know how it is different from the traditional partnerships:-

1. A LLP is a body corporate and it is an entity separate from its partners.
2. It will be registered with the Registrar of companies.
3. It has perpetual succession.
3. Any change in partnership will not affect the existence, rights and Liabilities of the LLP.

3.THE LIMITED LIABILITY

The concept of Limited liability can further be inserted from the relation of partners inter se and the relation of the partners with the firm as mentioned in the Bill:-

1. Every partner of the LLP shall be agent of the LLP for the purpose of the business of the LLP but he shall not be an agent of other partners like traditional partnerships.
2. A LLP is not liable to third person for the act of a partner who has no authority to do a particular act and the person dealing with such partner has knowledge about it.
3. An obligation of the LLP arising out of any contract or otherwise shall be the sole liability of the LLP.
4. The Liabilities of the LLP shall be met out of the property of the firm only.
5. The Partners of the LLP shall not be personally liable for the obligations arising out any contract. Here it should be noted that the partners shall be personally liable for their wrongful acts and deeds but here also they shall not be liable for wrongful acts and deeds of other partners.

4.THE IDENTITY

The persons dealing with Limited Liability partnership firms should know the status of the firm before dealing and for this purpose it has been provided in the bill that every LLP should suffix “Limited Liability partnership” or “LLP” with its name. The name of the firm will indicate the persons dealing with the firm about the special characteristics of the firm.

5.THE SAFE GUARDS

Certain safeguards have also been proposed to be incorporated in the law against this Limited Liability concept. Let us have a look at the some of these safeguards:-

1. Compulsory audit of the LLPs barring certain exceptions.
2. Filing of annual statement of accounts and solvency with the registrar along with the annual return and all these documents shall be open for public inspection at the office of the registrar.
3. Central Government shall have power to order inspection in the affairs of the LLP.

6.THE PERSONAL LIABILITY IN LLP

Though in general the Liability of partners of LLP is Limited as mentioned above but in certain cases , the concept of Limited liability ceased and these circumstances are as under:-

1. For acts done to defraud the third party and in that case the involved partner shall be personally liable.
2. For compliance of all the procedural requirement of the law applicable on the LLP.
3. If the number of partners is reduced to one and the sole partner continues the firm as such after 6 Months.

7.SPECIAL CHARACTERSTICS

1. The LLP can sue and can be sued.
2. The LLP can acquire, hold and dispose the property.
3. At its option the LLP can have it’s common seal also.