Salient Features of Limited Liability Partnership Act, 2008

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Terms Used in the Paper

LLP	Limited Liability Partnership
Registrar	Registrar of Companies
Act	Applicable Act
Firm	Partnership Firm
ROC	Registrar of Companies

Introduction

A new type of business structure came into effect as from January 7, 2009 the day when the Bill having been passed by the both house of Parliament, received the assent of the President. It came on the statute book as THE LIMITED LIABILITY PARTHNERSHIP ACT, 2008 (6 of 2009).

Till date we were having different forms of entrepreneurs as Company, Firm, and Proprietor etc. which were being used by a large number of businessmen. Companies are basically for large entrepreneurs because of various statutory compliances whereas Partnership firm and Proprietorship do not have any existence separate from their partners or proprietor. Running business as a partnership firm was creating a bottleneck somewhere when the matter of risk comes. Partners were directly exposed to the risk and were personally accountable even their personal property too can be utilized to mitigate the loss.

Indian economy has shown tremendous growth, the role played by entrepreneurs as well as 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, in order to enable professional expertise and entrepreneurial initiative to combine, organize and operate in flexible, innovative and efficient manner.

The essence of a Limited Liability Partnership for practical purposes is as a vehicle to contain a partnership of any size where partners may not be at risk from the careless or accidental negligence of a colleague or where some partners are not actively involved.

Purpose of the Act

The Limited Liability Partnership (LLP) is viewed as an alternate corporate business vehicle that provides the benefits of limited liability but allows its partners the flexibility of organizing their internal structure as a partnership based on a mutually arrived agreement. The LLP form would 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. Owing to flexibility in its structure and operation, the LLP would also be a suitable vehicle for small enterprises and for investment by venture capital.

The salient features of the LLP Act 2008

Separate Legal Entity: The LLP shall be a body corporate and a legal entity separate from its partners. It shall have perpetual succession and any change in partners shall not affect the existence, rights and liabilities of LLP. LLP can do anything that a natural person could do. It has the ability to enter into contracts and hold property, and will continue in existence in spite of any change in partners.

Liberty to decide mutual rights and duties: The mutual rights and duties of partners of an LLP inter se and those of LLP and its partners shall be governed by an agreement between the partners or between LLP and its partners.

Limited Liability: The LLP will be a separate legal body, liable to full extent of its assets and the liabilities of partners shall be limited to their agreed contribution in LLP. No partner would be liable to any independent or unauthorized actions of other partners.

Number of Partners: At least two partners are required to form LLP and shall also have at least two individual Designated Partners out of which one must be resident in India. So each LLP shall have at least two individuals as partner. Even body corporate can be partner in LLP and no limit for maximum number of partners.

No Minimum Capital Requirement: There is no minimum contribution specified by the LLP Act, 2008. Contribution may consist of movable/immovable or tangible/intangible or in other mode including money and contracts for services performed or to be performed. The monetary value of contribution of each partner shall be accounted for in the books of LLP.

Annual Accounts & Audit: The LLP shall have 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 LLP shall also be audited subject to any exemption provided to any class of LLP by Central Government. (Exemption: - LLP whose turnover dose not exceeds, in any financial year, forty lakh rupees, or whose contribution does not exceed twenty-five lakh need not to get its accounts audited.)

Investigation of Affairs: The Central Government has power to investigate the affairs of an LLP, if required, by appointment of one or more competent persons as Inspector for the purpose. Partner of the LLP can also apply to the Tribunal for appointment of an Inspector. Body Corporate, firm or other associations are being prohibited to be appointed as an Inspector. Only individuals can be appointed as an Inspector.

Merger and Amalgamation: The compromise, arrangement, merger and amalgamation of LLP shall be done as per the provisions of the Act. For any compromise or arrangement between the LLP and its creditors or between LLP and its Partners first application is to be made to the Tribunal by either of the party and can be done only after complying with the requirement of Tribunal and Act. Order passed by the tribunal shall be filed with Registrar within 30days and shall have effect only after it is so filed.

Conversion to LLP: A firm, private limited company, unlisted limited company would be allowed to be converted into LLP in accordance with the provisions of the Chapters and Schedules of the Act. The Registrar after satisfying that all provisions have been complied with shall issue a certificate of registration. The LLP shall within 15days of date of registration, inform to the earlier registering body about such conversion.

Winding up and Dissolution: The winding up of a LLP may be either voluntary or by the order of Tribunal. LLP so wound up may be dissolved.

Electronic Filing of Documents: Any document required to be filed, recorded or registered under this Act may be filed, recorded or registered electronically if it is Digitally Signed (as per the Information Technology Act,2000). Similarly Registrar can also issue certificate or other documents Digitally Signed and same is admissible as evidence.

Applicability of the provisions of the Companies Act: The Central Government my, by notification, direct that any of the provision of the Companies Act,1956 shall apply to LLP either in full or with such exception, modification and adaptation, as may be specified in the notification.

Applicability of Indian Partnership Act, 1932: The Indian Partnership Act, 1932 shall not be applicable to LLP.

Difficulties with a firm under Indian Partnership Act, 1932

Under the Partnership Act Firm was not separate from its partner and were liable jointly and separately for any act done by the firm or by its partners. Hardship arises when this liability extents to their personal assets too. Partners are not liable only to the extent of their capital contribution but are personally liable too. Partners are exposed to greater risk and sometimes risk can be bigger than imagination. Personal Liability is not limited to working partners only, sleeping partners can also be held to meet out the liability and there liability is also unlimited. The risk becomes more severe when partners has to contribute their personal assets to meet out the claim and as the partners are jointly and severally liable, there can be a situation when one or two partners has to bear the whole because other partners have no personal assets.

A partnership can't file a suit and can not be suited unless it is registered.

Another issue was transparency in the organizational structure, transparency in reporting the annual accounts and transparency in business transacted during the year. There is no statutory requirement imposed by the Act to submit a Copy of Partnership Deed or any changes therein so that it could come in public domain. Except partners, nobody knows that who are the partners of the firm, what are their rights and duties and any change in the internal constitution.

The Act is silent about Accounts and Audit of the firm. There is no requirement of audit under the Act and not any books of accounts are required to be maintained. There is no requirement of filing any quarterly or annual return to a statutory body. Act does not have any provision of inspection or investigation in the affairs of the firm, so if creditors or partners have any dispute they have to go for Arbitrage or Civil Court.

Transparency was a major issue at which the Act is neutral. No minutes, reports, returns, documents need to be submitted to public office and because of that data related to firms or their performance is not in public domain. The loss of this is that the effort of partnership firms remains unrecognized for a very long period. Bankers do feel dizzy about financing the firm because of the weak control of Government, lack of transparency, no data in public domain etc.

One another problem largely faced was that a partner can not transfer its share in the firm to any other partner unless all partners are agreeing at the same. So even you have higher interest or no interest you have to continue. Perpetual succession was lacking and resulted in structural hardship. If a partner dies then the firm automatically gets dissolved, unless provided otherwise in the partnership deed. This clause is harsh in nature and omission in the deed can prove very costly in future.

Even if we see at the Government of India's policies, there is nothing in the basket of firms. Government do not have any data that how many firms are operating in the country either in organized or un-organized sector, manufacturing, services, trading etc. Result is that Government is not interested to frame any policy for the growth of the firms.

All the above are the difficulties with partnership firms and the only reason why such a big effort of firms remains out of focus for such a longer period. The firms started playing at international level and performing very well so it was necessary to provide them a legal platform so that they can be more innovative, risk taking and widely recognized in and outside the country.

Difficulties faced by entrepreneurs in doing business as a Company

Companies are body corporate, separate legal entity capable to do all the acts which a person can do. Shareholders and members are different from the company and they are not personally liable for the acts by the company. Members are not allowed to take part in day to day business, although they can appoint and remove directors, auditors etc. Directors are duty bound to carry on business and take decisions. Members are allowed to take decision or give their view when it is required by the Companies Act.

Small and Medium enterprises get is quiet difficult to operate through a limited company because complex legal regime, originally designed for large companies, under which some decisions have to be made by the directors, but others must be effected by the right type of resolution (ordinary, special, etc.) by the general meeting.

For establishing a company you need a minimum capital and incorporation expenses are also high. Fee for incorporation is based on authorizes capital, hence it becomes costly.

Another hardship is several compliances of the Act as holding statutory meeting, at least 4 board meeting, annual general meeting, extra-ordinary general meeting, constituting audit committee and filing of several notices and minutes with registrar. So the legal compliances are so high that entrepreneurs feel scary about it. Penalties and fee of consultants proves the company affair very costly, because Act is so wide and people by themselves can not understand and fulfill the requirements. Several registers and records and returns are to be made especially for the compliance purpose.

Companies are required to disclose all the matters related to meetings, decision taken, resolution passed, issue and buyback of shares etc and are accessible by the public. So at a level it becomes hard to compete, because your competitors do also know about your turnover, debt, margins, product contribution and technology.

Benefits of Limited Liability Partnership

LLP is a midway solution between the firm and company. Keeping in mind the small and medium enterprises all the goodies have been merged and a new form came out having the outer structure of company and internal structure of firm. Outer structure of company means it is a body corporate, a separate legal entity from its partners and can do all that its partners can do. Any addition or change in partners shall have no impact on LLP; it is same as change in shareholding pattern in companies.

No major investment is required to form a LLP, not a high incorporation expense. So this way it is cheaper than a company. The outer structure of LLP provides the right to enter into a contract, sale and purchase and hold property, common seal, and right to sue and to be sued. This also limits the liability of LLP to the extent of its assets only and liability of its partners to their contribution only.

If a LLP has constructed a bridge and it falls down and court orders a hefty compensation and penalty, only LLP shall be held liable to pay and to the extent of its assets only. Partners are not to be held personally liable, if acted properly.

Similarly if a LLP dealing with international client and client files a suit against the loss caused in the course of business, it may be possible that LLP could not properly argue the case in court and may have to pay large sum as compensation. Only LLP shall be held liable to pay and to the extent of its assets only. Partners are not to be held personally liable, if acted properly.

If we compare the hardship in legal compliance in case of limited companies, LLP has very less and adequate compliance. Only annual returns and any changes in constitution, hypothecation of assets or stock are to be filed with registrar. No detail of meetings and resolution passed is required to be filed. It is good from disclosure point of view too. As the LLP is very much suitable of small and medium enterprises and they always remain is growing stage, competitors are easy to come hence any leakage of strategy or decision taken can prove costlier to them. LLP structure save them by not asking to submit minutes, resolutions etc with registrar.

Provision of Accounts and Audit makes the LLP accountable and transparent. Audit under the act is different from the tax audit under Income Tax Act.

Internal structure of the LLP is to be decided by the agreement between the LLP and its partners and among its partners. Agreement can be a complex as well as simple too, depending upon the nature of trade or business. Manufacturing and trading sectors may have a simple agreement whereas service sector can go for a complex one. Profit share, remuneration to partners, interest on contribution, nature of duty etc. is to be decided by the agreement. If there is no agreement then First Schedule of the Act shall apply which is quite similar to provisions of Indian Partnership Act.

One another liberty taken from companies and provided to the partners of LLP is that they can transfer their right and can receive distribution also. It made the partners to decide their engagement in business of their interest.

Contribution by partners can be in any form tangible, intangible, movable or immovable property, any other right, money, promissory note or contact to provide the service or services already provide. It has provided a platform to form partnership among people of different sectors, so that they can form a LLP by contributing what they have to offer.

LLP do provide the right to investigate the affairs either on the basis of order passed by Tribunal, Court or at the request of Creditors or partners. Indian Partnership Act does not have any such kind of Provision but the Companies Act has. It provides relief to aggrieved party to avoid longer litigation in Civil Court.

LLP has one additional feature taken from Companies Act that, it can be amalgamated, merged, demerged, Arrangement and Compromise can also be made. It provides a new life to LLP and gives the assurance that it will go on and on.

Comparison between LLP Act and Companies Act

Company	Limited Liability Partnership
Company under Companies Act, 1956	LLP under Limited Liability Partnership Act, 2008
Memorandum is to be filed with ROC	Incorporation Document is required to be filed.
Name to contain 'Limited' or 'Private Limited' as suffix.	Name to contain 'Limited Liability Partnership' or 'LLP' as suffix.
Articles are to be filed at the time of incorporation. Private company must have Articles. In case of public company, provisions of Table A apply if there are no Articles.	LLP Agreement is required to be filed later. In absence of LLP Agreement, mutual rights and duties will be as specified in first schedule to LLP Act. Thus, practically, each LLP must have LLP Agreement, though not mandatory.
Managing Director and Whole time Director to look after day to day administration.	Designated Partner to look after statutory compliances. Otherwise, all Partners can look into affairs of the LLP. However, LLP can delegate powers to some partners who may be designated as 'Managing Partner', or 'Executive Partner' or any other name.
Individual director or member does not have authority in conduct of business of company.	Every partner has authority to conduct business of LLP, unless the LLP Agreement provides to contrary.
Restrictions on remuneration to director as per Companies Act	No restriction on remuneration to partner. Remuneration should be provided in LLP agreement.
Notice of change of director is to be given by company.	A partner who has resigned from LLP can himself file notice of his resignation to ROC.

Share, share certificate, register of members, transfer and transmission of shares etc. required.	No requirement of share and share certificate. Hence, no question of its issue, allotment, transfer, rectification of register etc.
Board meetings, general meetings are required.	No provision for regular meeting of Board and members. Partners can decide when and how to meet, delegation of powers etc. Provision is made that LLP should maintain minute book.
Elaborate records and registers are required to be maintained	No records and registers have been prescribed. Only Proper Books and ledgers are required to be maintained.
Restrictions on Board, regarding some specified contracts, contracts in which directors interested, investments, loans and guarantees to other companies	Partners are free to enter into any contract.
Disclosures required of contracts where directors are interested	No requirement of disclosures required of contracts where partners are interested, unless specified in LLP Agreement.
Elaborate provision relating to redressal in case of oppression and mismanagement.	No provision relating to redressal in case of oppression and mismanagement.

Taxation of Limited Liability Partnership

The Union budget is expected to provide clarity on taxation of limited liability partnerships (LLP) by treating them like partnership firm for tax purpose. The Income-Tax Act does not have any provision for taxation of LLP, which are a hybrid between companies and partnership firms. It only provides for taxation of companies, partnerships or association of persons.

Few countries do not tax the partnership firm, rather tax the income in the hands of partners. But in India it is expected expect that LLP in India to be taxed in the same manner with profit distributions being tax-free in the hands of the beneficiaries. A parliamentary standing committee that examined the LLP bill before it was passed by Parliament had recommended that these entities should be allowed to choose between taxation at the level of the firm or partners. Any other kind of additional tax burden would make LLP unattractive. No new kind of taxation policy is expected, as it may hamper the intention of law maker; however it is still a matter of speculation unless the Government comes clear on the issue.

Provisions of the Limited Liability Partnership Act, 2008

The Act is divided into 14 chapters and 4Schedules. Chapters Contain Provisions of the Act and first Schedule is about provisions regarding mutual rights and duties of partners and LLP in the absence of any agreement on such matter. Second to Fourth Schedule is about Conversion of firm, private company and unlisted public company to LLP respectively.

Chapter I

Preliminary

- It extends to the whole of India

Chapter II

Nature of Limited Liability Partnership

- A LLP is a body corporate and is a legal separate legal entity separate from its partners.
- It shall have perpetual succession
- Any change in partners shall not affect the existence, rights or liabilities of LLP.
- Any individual or body corporate may be a partner.
- It shall have at least two partners all the time.
- It shall have at least two individual designated partners and at least one of them shall be resident in India. Nominees of body corporate can act as designated partner.
- Every designated partner shall obtain a Designated Partner Identification Number (DPIN) from the Central Government.
- Designated partners shall be responsible for compliance of the Act along with duties specified in the LLP agreement.
- If no designated partner is appointed or less than two at any time, all partners shall be treated as designated partner.

Chapter III

Incorporation of LLP and Matters Incidental Thereto

- Two or more person with a view to carry on a lawful Business and with a view to make Profit shall subscribe their name to the incorporation document.
- Incorporation document shall be filed with the Registrar.
- Statement stating that all the requirements of the Act and Rules have been complied with.
- Registrar shall within 14days give a certificate that LLP is incorporated by the name specified therein.
- On registration LLP shall be capable of suing and being sued, acquiring, owning, leasing, holding and developing or sale of property and all other act which a body corporate can do lawfully.

Chapter IV

Partners and their Relation

- The person who subscribed their name to the incorporation document shall be its partners and any other can also be a partner in accordance with the LLP agreement.
- Rights and Duties of partners and the relation between the partners and between LLP & its partners shall be governed by the LLP agreement.
- If a partner ceases to be a partner or any change in the name or address of a partner, LLP shall file a notice to the registrar within 15days of such change.

Chapter V

Extent and Limitation of Liability of LLP and Partners

- LLP is not responsible for any act done its partners beyond their authority.
- LLP is responsible if a partner is liable for wrongful act done in the normal course of business of LLP or with authority.

- A partner is not personally liable for an obligation if it is solely the obligation of the LLP.
- In case of fraud, the person or LLP who has done it shall be liable personally also.

Chapter VI

Contributions

- No specific minimum contribution. It can be even zero.
- Contribution can be in any mode. It may consist of tangible, intangible, movable or immovable property or other benefit or service.
- The monetary value of contribution of each partner shall be accounted for and disclosed in the accounts of LLP.

Chapter VII

Financial Disclosures

- The LLP shall maintain proper books of accounts relating to its affairs for each year both on cash basis or accrual basis and as per the double entry system.
- It shall file an annual return with the registrar within sixty days of closure of its financial year.
- The accounts of the LLP shall get audited. Central Govt. is empowered to exempt any class of LLP from the provisions of Audit. (Currently LLP having turnover not exceeding 40Lacs in any financial year and Contribution less than 25Lacs are exempt)

Chapter VIII

Assignment and Transfer of Partnership Rights

- Partner is eligible to transfer and receive distribution of share of the profit provided it is in accordance with LLP agreement.
- The transfer of any right by any partner does not itself cause the disassociation of partner or dissolution or winding up to the LLP.

Chapter IX

Investigation

- The Central Government shall appoint one or more competent persons as inspector to investigate the affairs of the LLP if
    - The Tribunal either suo motu or on an application made by not less the 1/5th of the total number of partners, declares that the affairs to be investigated: or
    - Any court, by order, declares that the affairs to be investigated
- No firm, body corporate or other association shall be appointed as an inspector.
- Designated Partners and Partners of LLP are duty bound to provide all information and co-operate in investigation.
- If the inspector has reasonable ground to believe that papers related to LLP may be destroyed, altered, mutilated, falsified or taken away, he may make application to Judicial Magistrate and seize the books and papers as per the order.

Chapter X

Conversion to LLP

- A firm, private limited company and unlisted public limited company can be converted into LLP by registering itself as LLP under the Act.
- For conversion provision or Schedule Second to Fourth of the Act, as the case may be, need to be complied with.
- On conversion private limited or public limited shall be removed and limited liability partnership or LLP shall be added as suffix to its name.
- On such conversion LLP shall inform the concerned registrar of firm, company about such conversion within 15days of the date of registration.

Chapter XI

Foreign LLP

- The Central Government may make rule for provision in relation to establishment and place of business in India by foreign LLP.

Chapter XII

Compromise, Arrangement or Reconstruction of LLP

- Where a compromise is proposed between the LLP and its Creditors or LLP and it Partners, application need to be made before the Tribunal.
- Tribunal on application made either by the creditor or partners or liquidator of LLP, order a meeting of the creditors or of partners, as the case may be, to be held and conducted in such manner as may be prescribed.

Thanks