

Limited Liability Partnership (LLP)

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(A) General:

As you all are aware, the Country now has a new form of business organization called Limited Liability Partnership (popularly known as LLP). It's a welcome move for those who have been carrying on their business in the form of Partnership Firm and still looking for a limit to their liabilities in case of wrongful or unauthorized acts of their partners. Moreover, having less compliances to be made, LLP may be preferred by those who might have opted to form a company had there been no such alternative business form available as LLP. As it combines the advantages of both a Partnership and a Company, LLP is likely to be preferred by large number of people considering the advantages it provides.

It's a baby of a month or two (as far as Indian scenario is concerned). And as evident, there is always a great opportunity for discussion, learning and interpretation whenever we have a new enactment or a statute. Each and every invention (Act/Statute, in our case) has, as its roots, the limitations of something. Here this 'something' means the thing (law/Act) prevailing prior to the said invention. LLP is also not an exception to this. Though it may be quite difficult to analyze the exact issues enforcing the formation of LLP, one can surely have a bit of it. Following might be the some of them if not all:

1. While the number of Partners in case of Partnership varies from 2 to 20, a Private Company on the other hand can not have more than 50 Members. Though a Limited/Public Company does not have any such limit on number of members, very few would go for it considering the interferences of various agencies and compliances to be made by it. LLP does not have any such limitation on number of partners and has a lesser legal compliances to be made.
2. In a partnership form of business every partner is severally and jointly liable for the acts of other partners and that of Firm. His unlimited liability extends to his personal properties and other assets as well. A Partner in LLP is deemed to be an agent of the LLP only and not of other Partners. Hence a partner can not be held liable for the acts of other partners if done without authority or with *malafide* intentions. Similarly an obligation of a LLP is its own and a Partner can never be held liable for the same (similar to the position of a Director in a Company).
3. Professionals in India (Advocates, CA, CS, CWA) carry on their profession either individually (Proprietorship concern) or in partnership with others who at present mandatorily required to be the members of the same institutions/associations. For Example, a Chartered Accountant can not have a partnership in which an Advocate is also a Partner. If a Partnership Firm, then again there is a limit on maximum number of Partners as discussed above. Moreover, these professionals are also not allowed to carry out their

profession by incorporating a Company whether private or public. This has ultimately resulted in a slow growth of professionals in particular and of a country in general. LLP would provide a platform to these Professionals to get themselves associated with one another and accordingly would enhance their growth. *PWC and KPMG are also an LLP.* However here it must be noted that these institutions/associations have yet not amended their regulations allowing its members to form an LLP. But with more and more foreign professionals entering the country (whether directly or indirectly) and considering the needs of the business entities today, one can very soon see these institutions coming with necessary changes in this regard.

The above discussed are some of the issues that might have assisted to prepare the plot for the enactment of LLP Act.

Enumerating the need for LLP, the official website of the Ministry of Corporate Affairs (<http://www.llp.gov.in/>) describes as under: 1

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, in order to enable professional expertise and entrepreneurial initiative to combine, organize and operate in flexible, innovative and efficient manner.

The Limited Liability Partnership (LLP) is viewed as an alternative corporate business vehicle that provides the benefits of limited liability but allows its members 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.

Based on the recommendations of the Naresh Chandra Committee and J. J. Irani Committee the Government had introduced the LLP Bill, 2006 in the Rajya Sabha on the 15th December, 2006. It was referred to the Department related Parliamentary Standing Committee on Finance for examination and report. The Committee presented its 58th Report to the Lok Sabha on 27th November, 2007 and also laid the said Report in the Rajya Sabha on the same day. The Committee made several recommendations which were examined and considered by the Government. Based on the recommendations of the Committee, extensive changes were found to be necessary in the Bill. Hence it was proposed to withdraw the LLP Bill 2006 and a fresh LLP Bill 2008 was placed before the Rajya Sabha on 21st October, 2008. The Parliament passed the same on 12th December, 2008. The President of India has assented the Bill on 7th January, 2009.

The MCA has notified 31st March, 2009 as the appointed date to make effective the LLP Act (*vide Gazette Notification No. SO 891(E), dated 31st March, 2009*). The MCA has also notified the LLP Rules, 2009 (*vide Notification No. G.S.R. 229(E) dated 1st April, 2009*).

However, there is lot to discuss about LLP, its origin, statutory provisions, merits-demerits, Taxation and FDI aspects, Audit, Compliances etc.

First of all let's go through the meaning of LLP:

(B) Meaning and Nature:

Section 2(n) of the LLP Act, 2008 provides as under:

"Limited Liability Partnership means a partnership formed and registered under this Act."

Section 3 of the LLP Act, 2008 provides as under:

Nature of Limited Liability Partnership

- (1) A limited liability partnership is a body corporate formed and incorporated under this Act and is a legal entity separate from that of its partners.
- (2) A limited liability partnership shall have perpetual succession;
- (3) Any change in the partners of a limited liability partnership shall not affect the existence, rights or liabilities of the limited liability partnership.

The statutory definition of the said Act only speaks very little of the LLP and of its nature and thus to have a better understanding of the term we should seek recourse from various other sources.

To understand the nature of LLP one should go through the following **meaning as provided at <http://en.wikipedia.org/> . 2**

A limited liability partnership (LLP) is a partnership in which some or all partners (depending on the jurisdiction) have limited liability. It therefore exhibits elements of partnerships and corporations. In an LLP one partner is not responsible or liable for another partner's misconduct or negligence. This is an important difference from that of a limited partnership. In an LLP, some partners have a form of limited liability similar to that of the shareholders of a corporation. In some countries, an LLP must also have at least one "general partner" with unlimited liability. Unlike corporate shareholders, the partners have the right to manage the business directly. As opposed to that, corporate shareholders have to elect a board of directors under the laws of various state charters. The board organizes itself (also under the laws of the various state charters) and hires corporate officers who then have as "corporate" individuals the legal responsibility to manage the corporation in the corporation's best interest. An LLP also contains a different level of tax liability than a corporation.

Limited liability partnerships are distinct from limited partnerships in some countries, which may allow all LLP partners to have limited liability, while a limited partnership may require at least one unlimited partner and allow others to assume the role of a passive and limited liability investor. As a result, in these countries the LLP is more suited for businesses where all investors wish to take an active role in management.

The UK LLP Act, 2000 provides the following meaning of the term LLP: 3

A limited liability partnership is a body corporate (with legal personality separate from that of its members) which is formed by being incorporated under this Act; and-

(a) in the following provisions of this Act (except in the phrase "oversea limited liability partnership"), and

(b) in any other enactment (except where provision is made to the contrary or the context otherwise requires),

references to a limited liability partnership are to such a body corporate.

Section 4(1) of the LLP Act of Singapore provides as under: 4

A limited liability partnership is a body corporate which is formed by being registered under this Act and which has legal personality separate from that of its partners.

To understand the meaning and nature of LLP, following features of LLP as described at the official website of the MCA would be of immense help.

The salient features of the LLP Act 2008 inter alia are as follows: 5

(i) The LLP shall be a body corporate and a legal entity separate from its partners. Any two or more persons, associated for carrying on a lawful business with a view to profit, may by subscribing their names to an incorporation document and filing the same with the Registrar, form a Limited Liability Partnership. The LLP will have perpetual succession;

(ii) The mutual rights and duties of partners of an LLP inter se and those of the LLP and its partners shall be governed by an agreement between partners or between the LLP and the partners subject to the provisions of the LLP Act 2008. The act provides flexibility to devise the agreement as per their choice. In the absence of any such agreement, the mutual rights and duties shall be governed by the provisions of proposed the LLP Act;

(iii) The LLP will be a separate legal entity, liable to the full extent of its assets, with the liability of the partners being limited to their agreed contribution in the LLP which may be of tangible or intangible nature or both tangible and intangible in nature. No partner would be liable on account of the independent or un-authorized actions of other partners or their misconduct. The liabilities of the LLP and partners who are found to have acted with intent to defraud creditors or for any fraudulent purpose shall be unlimited for all or any of the debts or other liabilities of the LLP;

(iv) Every LLP shall have at least two partners and shall also have at least two individuals as Designated Partners, of whom at least one shall be resident in India. The duties and obligations of Designated Partners shall be as provided in the law;

(v) *The LLP shall be under an obligation 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 LLPs shall also be audited, subject to any class of LLPs being exempted from this requirement by the Central Government;*

(vi) *The Central Government have powers to investigate the affairs of an LLP, if required, by appointment of competent Inspector for the purpose;*

(vii) *The compromise or arrangement including merger and amalgamation of LLPs shall be in accordance with the provisions of the LLP Act 2008;*

(viii) *A firm, private company or an unlisted public company is allowed to be converted into LLP in accordance with the provisions of the Act. Upon such conversion, on and from the date of certificate of registration issued by the Registrar in this regard, the effects of the conversion shall be such as are specified in the LLP Act. On and from the date of registration specified in the certificate of registration, all tangible (moveable or immoveable) and intangible property vested in the firm or the company, all assets, interests, rights, privileges, liabilities, obligations relating to the firm or the company, and the whole of the undertaking of the firm or the company, shall be transferred to and shall vest in the LLP without further assurance, act or deed and the firm or the company, shall be deemed to be dissolved and removed from the records of the Registrar of Firms or Registrar of Companies, as the case may be;*

(ix) *The winding up of the LLP may be either voluntary or by the Tribunal to be established under the Companies Act, 1956. Till the Tribunal is established, the power in this regard has been given to the High Court;*

(x) *The LLP Act 2008 confers powers on the Central Government to apply provisions of the Companies Act, 1956 as appropriate, by notification with such changes or modifications as deemed necessary. However, such notifications shall be laid in draft before each House of Parliament for a total period of 30 days and shall be subject to any modification as may be approved by both Houses;*

(xi) *The Indian Partnership Act, 1932 shall not be applicable to LLPs*

(C) Comparison of LLP with Partnership and Company.

Though LLP is a combination of both Partnership and Company, it differs from them in certain aspects as discussed below:

Sr. No.	Details	Partnership	Company	LLP
1	<i>Applicable Law</i>	Indian Partnership Act, 1932	Companies Act, 1956	LLP Act, 2008
2	<i>Number of Members</i>	Minimum 2 and maximum 20	Minimum 2, Maximum 50 in case of Private	Minimum 2.

			Company. Minimum 7 in case of Public Company.	
3	Liability	Unlimited	Limited	Limited
4	Registration with concerned Departments	Not mandatory. Advisable	Mandatorily required to be registered with RoC.	Mandatorily required to be registered with RoC.
5	Perpetual Succession	Depends upon Partnership Deed.	Perpetual.	Perpetual.
6	Common Seal	Not required	Mandatorily required.	Optional.
7	Obligation for acts of others	Every partner is liable for the acts of other partners and that of the firm.	Directors are not liable for the acts of other Directors.	Partners are not liable for the acts of other Partners.
8	Corporate Restructuring (Merger/Amalgamation)	Not available	Available	Available
9	Taxation	Income of Firm Taxable @ 30% (+Cess and Surcharge as applicable).	Income of Company Taxable @ 30(+Cess and Surcharge as applicable).	Taxation aspects for LLP are yet to be notified.
10	Accounting Standards	Not Applicable	Applicable	Applicability yet not decided.
11	Audit	Not mandatory. Required as per Income Tax Act.	Mandatory	Not mandatory for LLPs having turnover less than Rs.40 Lacs or having contribution less than Rs.25 Lacs in any financial year. Mandatory otherwise.

(D) Merits-Demerits of LLP.

LLP-merits:

- 1) Partner in LLP is not liable for the wrongful acts of other partners.
- 2) LLP will have a perpetual succession. Admission or Cessation of a Partner shall not affect its status.
- 3) A Firm, Private Company or a Public Company can be converted in LLP.
- 4) Partner may transact with LLP.

- 5) Professionals like CA, CS etc. can form LLP.
- 6) No limitation on maximum number of Partners in LLP.
- 7) Even a body corporate can be a Partner.
- 8) Audit not mandatory for certain LLPs.
- 9) Rights of Partners can be transferred, either wholly or in part.
- 10) Lesser Compliances.
- 11) Provision for merger/Amalgamation (Corporate Restructuring).
- 12) LLP can hold and/or acquire properties.
- 13) LLP can sue and be sued in its own name.
- 14) Stamp Duty exemption can be availed in case of conversion from Firm, Company to LLP.

LLP-demerits:

- 1) Business with profit motive for LLP (Nothing like Section 25 Company).
- 2) Unlimited liability of partners and LLP in case of Fraud.
- 3) Mandatory filing with RoC.
- 4) LLP can not maintain financial secrecy.
- 5) Taxation issue yet not notified.
- 6) FDI issue yet not notified.
- 7) Accounting Standard yet not notified.

Friends, words from authority carry importance and acceptance by majority. I can not expect my views and discussions rigidly agreed upon by learned professionals who are having with them vast experience of years. But surely I have something to share with and hence this article. In case of any error or omission observed herein I request you all to bring the same to my knowledge by mailing me at compinejuriz@gmail.com. I also wish to share with you some other aspects of LLP like Incorporation of LLPs, Rights and Duties of Partners, Audit, taxation, Winding up etc. The same would follow. Regards.

1. <http://www.llp.gov.in/aboutllp.htm>
2. <http://en.wikipedia.org/wiki/LLP>
3. <http://www.uk-limited-liability-partnership-act.co.uk/s-31#1>
4. http://statutes.agc.gov.sg/non_version/html/homepage.html
5. <http://www.llp.gov.in/aboutllp.htm>