An Overview of Limited Liability Partnership (LLP) in India

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 an unlimited 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.

Origin

The Limited Liability Partnership was formed in the early 1990s in United States in the consequence of the collapse of real estate and energy prices in Texas in the 1980s. This collapse led to a large wave of bank and savings and loan failures. Because the amounts recoverable from the banks were small, efforts were made to recover assets from the lawyers and accountants who had advised the banks in the early 1980s. The reason was that partners in law and accounting firms were subject to the possibility of huge claims which would bankrupt them personally, and the first LLP laws were passed to shield innocent members of these partnerships from liability.

Apart from India Many Countries like Canada, China Germany, Greece, Japan, Kazakhstan, Poland, Romania, and Singapore have felt the need to recognize LLPs in their country.
Limited Liability Partnership in India

Preface

In India, The Limited Liability Partnership Act, 2008 was published in the official Gazette of India on January 9, 2009 and has been notified with effect from 31 March 2009. The first LLP was incorporated in the first week of April 2009. Some sections relating to conversion of existing partnership firms and private as well as public unlisted companies into LLP have been brought into force on 31-5-2009

At present, there are about 10,000 LLPs formed and registered under the Limited Liability Partnership Act.

Salient features of an LLP

a. An LLP is a body corporate and legal entity separate from its partners. It has perpetual succession.

b. Being the separate legislation (i.e. LLP Act, 2008), the provisions of Indian Partnership Act, 1932 are not applicable to an LLP and it is regulated by the contractual agreement between the partners.

c. Every Limited Liability Partnership shall use the words “Limited Liability Partnership” or its acronym “LLP” as the last words of its name.

d. It contains elements of both ‘a corporate structure’ as well as ‘a partnership firm structure’.

e. Every LLP shall have at least two designated partners being individuals, at least one of them being resident in India and all the partners shall be the agent of the Limited Liability Partnership but not of other partners.

f. LLP agreement is not mandatory but in the absence of LLP agreement, mutual rights and liabilities of partners shall be determined as provided under Schedule I to the LLP Act.

Advantages of forming an LLP

a. LLP form is a form of business model which is organized and operates on the basis of an agreement.

b. Liability of partners is limited to their agreed contribution in the LLP and no partner is liable on account of the independent or un-authorized actions of other partners, thus individual partners are protected from joint liability created by another partner's wrongful business decisions or misconduct.

c. LLP has more flexibility and lesser compliance requirements as compared to a company.

d. Simple registration procedure, no requirement of minimum capital, no restrictions on maximum limit of partners.

e. It is easy to become a partner or leave the LLP or otherwise.

f. It is easier to transfer the ownership in accordance with the terms of the LLP Agreement.
g. As a juristic legal person, an LLP can sue in its name and be sued by others. The partners are not liable to be sued for dues against the LLP.

h. No restriction on limit of the remuneration to be paid to the partners like companies, but the remuneration must be authorized by the LLP agreement and it cannot exceed the limit prescribed under the agreement.

i. The Act also provides for conversion of existing partnership firm, private limited Company and unlisted public Company into an LLP by registering the same with the Registrar of Companies (ROC).

j. No exposure to personal assets of the partners except in case of fraud.

**Disadvantages of forming an LLP**

a. Any act of the partner without the consent of other partners, can bind the LLP.

b. Under some cases, liability may extend to personal assets of the partners.

c. An LLP are not allowed to raise money from Public.

d. Because of the hybrid form of the business, it is required to comply with various rules & regulations and legal formalities.

e. It is very difficult to wind up the business in case of exigency as there are a lot of legal compliances under Limited Liability Partnership (Winding Up and Dissolution) Rules and it is very lengthy and expensive procedure.

**How to Form an LLP?**

Any two or more persons can form an LLP. Even a limited Company, a foreign Company, a LLP, a foreign LLP or a non-resident can be a partner in LLP. Although, there is no specific mention, a HUF represented by its Karta and a Minor can also be partner in LLP.

An Incorporation document (similar to memorandum) and LLP agreement (similar to articles of association) is required to be filed electronically. The Registrar of Companies (ROC) shall register and control LLPs.

**Steps to form an LLP:-**

**Step 1: Deciding the Partners & Designated Partners for forming**
Accounting aspects of Limited Liability Partnership

Every LLP shall maintain books of accounts and submit a statement of accounts and solvency within a period of 30 days from the end of six months of the financial year. It is also required to file annual return within 60 days from the end of the financial year. Apart from that, an LLP is also required to get its accounts audited if annual turnover exceeds Rs. 40 Lakhs or the contribution exceeds 25 Lakhs.

Revised Schedule-VI to the Companies Act, 1956 is not applicable to an LLP. It applies to all companies registered under the Companies Act but LLP is a body corporate and not a company.

Taxation aspects of Limited Liability Partnership

Income Tax

Budget 2009-10 has brought provisions regarding taxation of LLPs. Limited Liability Partnership will be treated as Partnership Firm for the purpose of Income tax and accordingly, all the relevant provisions regarding taxation of partnership firm has been modified.

The Income of LLP will be charged to tax in the hands of the LLP only and not in the hands of individual partners. Remuneration to partners will be taxed as “Income from Business & Profession” and share of profit in the hands of the
partner is exempt from tax u/s 10(2A). The LLP is allowed to get deduction of remuneration paid to the partners subject to the maximum of limit prescribed u/s 40(b).

Benefit of presumptive taxation is not given to an LLP. At present, the Income of an LLP is taxable @30% plus education cess but surcharge is not applicable to an LLP.

The LLP is also subject to alternate minimum Tax (AMT) which is similar to minimum alternate tax (MAT) in case of companies. However, there is no concept of book profit and it is calculated based on the adjusted total income. The Income tax law has also been modified for bringing the taxation aspects of conversion of Private Company or unlisted Public Company into an LLP on the paper. There are no tax implications on conversion of a partnership firm into an LLP.

**Note:** Now all the persons other than company are also subject to alternate minimum tax with effect from 01/04/2012.

**Service Tax**

For the purpose of Service tax also, an LLP will be treated as partnership firm only. Service Tax Rules, 1994 has been amended by the Service Tax (Amendment) Rules, 2012 to consider LLP as a partnership firm.

Even when the word “body corporate” is used it will not include LLPs despite of its legal status being a body corporate. Accordingly, partial reverse charge is also not applicable to an LLP.

**Sales Tax/Vat:-**

Under Sales tax, LLP is treated as body corporate. The definition of “Dealer” under Central Sales Tax, 1956 includes body corporate also.

Actually, there is no dissimilarity in partnership firm, company, body corporate etc with regard to payment, returns, audit etc. under sales tax. Provisions for different kind of dealers are distinguished based on the volume/size or turnover of the dealer and not on the basis of the status of the dealer.

**Different perspective of Limited Liability Partnership**

**Manufacturing Sector:-**

Limited Liability Partnership is recognized as legal form in the manufacturing sector. Many small and medium enterprises have enjoyed the dual advantage of less compliance with higher access to credits in the market.

**Service Sector:-**

LLP has come like boon for the service sector and especially for professionals like chartered accountants/company secretaries & advocates.
MCA has also clarified that for the limited purpose of section 226(3) of companies act, 1956, an LLP shall not be treated as body corporate and accordingly, an LLP of Chartered Accountants is allowed to conduct statutory audits of companies.

In short, LLP can be formed to do any type of business (manufacturing, trading, commercial or professional service) for the objects to earning the profit. However, it cannot be formed for the charitable purpose.

**Foreign Direct Investment in LLPs**

Foreign Direct Investment in Limited Liability Partnership is allowed, with the specific approval of the government, in those sectors/activities where 100% FDI is otherwise allowed under the automatic route and there are no FDI-linked performance related conditions.

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**Recommended Read**

- Incorporation of limited liability partnership
- Brief overview on Ind AS 116 - Leases
there 1 question, i thought LLC is Limited Liability, but in your article u saying, sometime, it will lead to personal assets, then in
that case it is not LLC right?