



The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2024

Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

LIMITED LIABILITY PARTNERSHIP IN INDIA: AN IN-DEPTH ANALYSIS

~ *Sumit Mishra*

INTRODUCTION

Limited Liability Partnership (LLP) is an emerging form of business entity in India. LLP is Limited liability partnership form of incorporating business, this form actually combines beneficial features of partnerships and companies (flexibility and limited liability, respectively) introduced via LLP Act, 2008. In this article, we will look at the nuances of the LLPs in India, right from how they are legally set up to the benefits to its registration process to compliance required to what would it mean for the business ecosystem.¹



HISTORICAL BACKGROUND

The LLP Act, which came into effect on January 7, 2009, represented a significant departure in India's business regulatory milieu. This was another legal manoeuvre to provide with a more

¹ Limited Liability Partnership Act, No. 6 of 2009, India Code (2009).

solid and universal solution against typical partnerships and private limited company. Before this the business entities in India were mainly run as sole proprietorship, partnership or companies, each with its own advantages and disadvantages. LLPs were introduced with the clear intent to bridge a gap that had arisen with increasing demand for a business vehicle for the operational flexibility of a partnership and the limited liability protection of a company.²

LEGAL FRAMEWORK

Definition and Structure

According to section 2(1) (n) of the LLP Act, 2008, LLP is a partnership formed and registered under the LLP act with minimum one partner, with the features of limited liability.³ A separation of ownership and management is facilitated in the LLP structure, which helps partners to run the business without worrying as to whether their personal property would be at stake if the business goes bankrupt.⁴

Governing Bodies

LLP in India: Ministry of Corporate Affairs (MCA) is the main regulatory body of LLPs.⁵ Registration and compliance of LLPs are regulated by the office of Registrar of Companies (RoC).⁶ The Limited Liability Partnership (Amendment) Act, 2021 has also brought about wide-ranging reinforcements in the LLP regime in order to strengthen the compliance and governance standards.⁷

BENEFITS OF LLP

Limited Liability Protection: One of the primary advantages of an LLP is limited liability protection. The partners' liability will be restricted to their agreed-upon contribution to the

² Sanjeev Gupta, Limited Liability Partnership in India: An Overview, 32 J. Indian L. & Soc'y 22, 24 (2009).

³ Limited Liability Partnership Act, supra note 1.

⁴ Deepak Sharma, Limited Liability Partnerships: A New Age Business Vehicle, 5 Corp. L. Rev. 67, 68 (2010).

⁵ Ministry of Corporate Affairs, Government of India, <http://www.mca.gov.in>.

⁶ Registrar of Companies, Ministry of Corporate Affairs, Government of India, <http://www.mca.gov.in>.

⁷ Limited Liability Partnership (Amendment) Act, No. 31 of 2021, India Code (2021).

business, and their personal property would be protected in the case of business debts and obligations.⁸

Separate Legal Entity: LLP is a juristic entity in its own right and distinct from its partners. This allows the LLP to continue with business even if there is a change of its partners.

Management flexibility: An LLP has more flexibility under management and operations than the companies, because the LLP agreement would be prepared by the partners themselves to define the management structure and operational rules.

No Minimum Capital Requirement: An LLP does not require a minimum contribution of capital by any partner. This provision helps small and medium enterprises to set up and run a partnership firm with less difficulty.⁹

Tax benefits: They have tax advantages over a company: select profit allocation which improves profit, and tax benefits for each partner. Personal Limited Partnerships bear little or no corporation tax, and profits are allocated after reducing the individual's drawings. No dividend distribution tax so quite a saving.¹⁰

Less Compliance Burden: LLPs have less compliance requirements than those of companies, which makes it an attractive choice for entrepreneurs who wish to operate in an environment with fewer specifications.¹¹

REGISTRATION PROCESS

⁸ Sushil Gupta, Advantages of LLP over Traditional Partnership, 10 J. Corp. L. 43, 44 (2011).

⁹ Anil Kumar, LLP: The Emerging Business Model, 45 Indian Bus. L. J. 67, 68 (2012).

¹⁰ Income Tax Act, No. 43 of 1961, India Code (1961).

¹¹ Ministry of Corporate Affairs, supra note 6.

Step wise process to form a LLP in India



1. *Obtain Digital Signature Certificate (DSC)*

Why: For filing of e-forms on MCA portal, DSC is mandatory for the process.

How: Acquire DSC from the authorised certifying bodies of the government.¹²

2. *Obtain Director Identification Number (DIN)*

Why: DIN is mandatory if you are a designated partner of the partnership organization.

How: The person who wants to register himself as a director needs to fill the form DIR-3 on the online portal of MCA with proof of identity and address.¹³

3. *Name Reservation*

Why: In order to finalise a name for the LLP, one has to make sure that it complies with the guidelines set by the MCA and therefore it has to be unique.

How: The LLP requires filling up the RUN – Reserve Unique Name form on the MCA portal. The name should conform to the guidelines outlined in the topic on naming conventions.¹⁴

4. *Incorporation of LLP*

Why: Register the LLP to warrant its formation as an official entity.

How: Incorporate LLP through Form FiLLiP and the form should contain the following documents:

- Subscriber's Sheet: It also contains the details of partners.
- Proof of Registered Office: Any address where the LLP would be registered needs to be provided.
- Partner Details: The personal information of all the partners registered with DIN.

¹² Ministry of Corporate Affairs, Government of India, Steps to Incorporate LLP, <https://www.mca.gov.in/content/mca/global/en/llp/steps/incorporation.html> (last visited June 8, 2024).

¹³ Id.

¹⁴ Id.

This form can also be used in making an application for the DIN in case the partners have not yet been registers.¹⁵

5. Filing LLP Agreement

Why: Describes the extent of freedoms partners are allowed as well as responsibilities partners have.

How: Prepare the LLP agreement and file it in RD-03A within 30 days of incorporation of the LLP firm. This agreement has to be signed by all the partners and the content has to be in a form of a partners' agreement that has to include issues like profit sharing ratios, partner's activities, duties among others.¹⁶

6. Certificate of Incorporation

After the Registrar (RoC) has signed and stamped all the documents as required, the company is issued with a Certificate of Incorporation. This certificate is also comprised of the LLP Identification Number (LLPIN).¹⁷

7. Post-Incorporation Compliance

- **Bank Account:** The firm should open a bank account in its name with a bank of the LLP's choice.
- **PAN & TAN:** Obtain PAN and TAN from the income tax department for the LLP.
- **GST Registration:** Register for GST, if the LLP is applicable for the same.
- **Other Licenses:** Fresh licenses relevant to business operations should also be acquired.¹⁸

¹⁵ Id.

¹⁶ Id.

¹⁷ Id.

¹⁸ Id.

COMPLIANCE REQUIREMENTS

Annual Filing

According to Section 34 of the LLP Act, 2008, all LLPs must submit Form 11 (Annual Return) to the ROC, together with Form 8, within 30 days after the conclusion of the first six months of the financial year. This submission includes a Statement of Accounts and Solvency.¹⁹

Income Tax Filing

LLPs with yearly turnover exceeding INR 40 lakhs or contributions over INR 25 lakhs are required to file ITR and have their accounts audited by a Chartered Accountant (CA).

Annual General Meeting

An LLP must organise an Annual General Meeting within six months after the end of the financial year to examine financial issues and compliance.

Auditor Appointment

LLPs, which qualifies certain criteria, needs to allocate an auditor for auditing financial records and reporting compliance.²⁰

Other Compliances

Depending on the type of business organisation, LLP's may be mandated by law to perform additional compliance laws such as GST Laws, Professional Tax laws, and EPF laws among others.²¹

IMPACT ON THE BUSINESS ECOSYSTEM

Facilitating Startups and SMEs

The LLP structure has also made its way to be popular among startups and SMEs sellers because it is easy, flexible, and relatively cheap. On a positive note, LLPs have a favourable

¹⁹ Limited Liability Partnership Act, No. 6 of 2009, § 34 (2009) (India).

²⁰ Id.

²¹ Goods and Services Tax Act, No. 12 of 2017, India Code (2017); Professional Tax Act, No. 16 of 1975, India Code (1975); Employee Provident Fund and Miscellaneous Provisions Act, No. 19 of 1952, India Code (1952).

operating environment due to its limited liability protection and ease of management thereby promoting innovation and entrepreneurship.²²

Attracting Foreign Investment

LLPs have also played a significant role in bringing in foreign investment because in the LLP framework, the capital investment can be easily protected. FDI is allowed in LLPs, subject to certain conditions, thereby making it more preferable for foreign ventures who want to venture into the India market.²³

Promoting Professional Services

LLP is optimal for the legal professionals who are generally involved in extensive service areas, for instance, Law firms, accounting firms and Advising firms. This kind of organisation has a relatively low risk for the shareholders, especially due to the limited liability and operational freedoms that are provided to them, while also permitting professionals to work together and diversify their services in a manner that a traditional partnership does not allow.²⁴

CHALLENGES AND LIMITATIONS

There are certain challenges and limitations associated with LLPs in India. Some of the key challenges/ limitations of LLPs are given below:

Limited Access to Capital

The major disadvantage of an LLP is limited fundraising or more specifically, it has limited access to the capital markets. This may turn into a disadvantage for LLPs as they cannot directly issue shares to the public as companies do and, therefore, may experience some restrictions in terms of expansion of their businesses.²⁵

²² Anil Kumar, LLP: The Emerging Business Model, 45 Indian Bus. L. J. 67, 68 (2012).

²³ Foreign Exchange Management Act, No. 42 of 1999, India Code (1999).

²⁴ Deepak Sharma, Limited Liability Partnerships: A New Age Business Vehicle, 5 Corp. L. Rev. 67, 68 (2010).

²⁵ Sanjeev Gupta, Limited Liability Partnership in India: An Overview, 32 J. Indian L. & Soc'y 22, 24 (2009).

Regulatory Changes

Another key issue with the compliances of an LLP is irregularity in the regulatory requirements of LLPs. Keeping up to date and operational with the constantly changing laws is not always an easy task, which eventually prove to be a considerable strain for smaller organisations.²⁶

Complexity in Conversion

Converting LLP to private limited company or vice versa would take considerable time as the processes are quite intricate. One area is in flexibility to alter the business structure: there seems to be limited ability to change the model which can be a disadvantage if a business is looking to grow or transition.²⁷

LLP IS SUITABLE FOR WHAT KIND OF BUSINESSES?

The LLP is one of the most flexible companies that can be used in various types of businesses and is especially useful for companies that require legal protection against liability but allow the flexibility of operating in any way possible.

Professional Service Firms

This is especially so for those firms that offer professional services, including law firms, accountancy firms, consulting firms, and architectural firms. These businesses can take advantage of the fact that the LLP form offers limited liability to the chosen partners while enabling them a rather high degree of operational freedom. The business affairs or undertakings of the professional corporations will not have a direct impact on their personal liabilities because this form of business structure protects its members like the traditional form of partnership does not.²⁸

Companies/Houses/Establishments that can be classified as Small and Medium Sized Enterprises.

Those businesses that are considered as small and medium sized enjoy identifying with LLPs. The other areas where LLP reduces compliance burden include lack of minimum capital requirements and the ease of regulatory and legal compliance processes for SMEs. The limited

²⁶ Id.

²⁷ Id.

²⁸ Sushil Gupta, Advantages of LLP over Traditional Partnership, 10 J. Corp. L. 43, 44 (2011).

liability feature also safeguards the partners' personal property, which is very useful to those who operate small businesses because, in case things go wrong or the company's business fails, the partners cannot lose all their property, money, and other assets involved in the business.²⁹

Startups

Another target business structure is also LLP, which is favoured by startups, especially the technology and service industries. Organisational structures used in startups are rather more flexible when it comes to management and decision making that helps the startups to respond to existing markets and investors with high speed. Also, since tax rates and the costs for regulatory compliance include some degree of start-up overhead, the benefits that come from engaging in LLPs, such as tax deductions and exemptions, can prove invaluable to young businesses.³⁰

Joint Ventures

Due to their flexible limited liability, LLPs are ideal for joint ventures which are legal associations of two or more businesses to work on a particular project or business undertaking. The LLP structure enables the partners, managing responsibilities and revenue streams to be divided as separate entities while at the same ensuring none of the individual partners' personal property is at risk during the course of the JV operation. The structure of LLPs thus makes it a structure that is suitable for entities that aim to carry out cooperative activities which involve joint contributions and cooperation in management.

Real Estate and Construction

The Real estate and construction sectors are also beneficial as LLPs, given the protection of the owners from fines. These industries are always associated with size-able financial risks, and the LLP protects the partners from these risks in the sense that their liability is only on the basis of their agreed contribution.³¹

²⁹ Anil Kumar, LLP: The Emerging Business Model, 45 Indian Bus. L. J. 67, 68 (2012).

³⁰ Deepak Sharma, Limited Liability Partnerships: A New Age Business Vehicle, 5 Corp. L. Rev. 67, 68 (2010).

³¹ Gupta, supra note 26.

WHICH BUSINESSES SHOULD AVOID FORMING LLPS

The concept of LLPs consequently has numerous benefits; however, they are not ideal for all businesses. However, some types of economic activities can be less beneficial or even limited if conducted in an LLP format.

Large Corporations

Industrial houses do not prefer to vouch for LLPs since they cannot issue equity shares in order to raise funds. Corporations require large amounts of capital for expansion and for operation and this is more readily sought from the public and private equity available to corporations. This LLP structure does not provide for the incorporation of share capital to mean that there are limited Legal ways in which the business can attract and obtain large amounts of capital.³²

Companies in search of Venture Capital or Private Equity Funding

Venture capital or private equity investment seeking companies that are looking forward to change their legal format may find LLP structure incompatible. Investors in these sectors have also tended towards private limited companies since this would directly come with the Companies Act that has stated and definitive provisions for shareholding and exit. Another disadvantage of LLPs is that there is no ability to issue shares in these partnerships, which may be a major turn-off to such investors.³³

Highly Regulated Industries

In the nature of industries that are occupied and highly monitored in its operations like banking and insurance, it is not allowed to conduct business without forming a company under relevant legal requirements. These businesses are also tasked with and capital and compliance requirements that are more appropriate to the corporate environment rather than LLPs.

Publicly Traded Entities

Companies listed on public stock exchanges or those with an intention to list their securities on the stock exchange should stay out of LLP structure. The LLP framework does not permit listing of the LLP and the sale of any shares in the LLP on the stock exchange – this is important to businesses seeking to engage in any form of public financing.

³² Sanjeev Gupta, Limited Liability Partnership in India: An Overview, 32 J. Indian L. & Soc'y 22, 24 (2009).

³³ Anil Kumar, LLP: The Emerging Business Model, 45 Indian Bus. L. J. 67, 68 (2012).

Companies which often have to be infused with Fresh Capital

Some business models that often need large amounts of capital injections can also be unsuitable for the LLP structure. On the equity side, LLPs cannot issue equity shares, which means that capital raising can often be a laborious process and has to depend strongly on internal resources or debt.

Non-profit Organisations

NPOs and charitable entities shall not consider LLPs. These are more appropriately classified as Trusts Societies or Section 8 companies under Companies Act as it is a more acceptable form of legal structure suitable for operating in suitable or operating in the requirements and statutory compliance.

CONCLUSION

The LLPs in India provide a blend of both Partnership and Company, and is preferred mainly by startups, SMEs, professional firms, joint ventures, and specifically sectors like real estate, construction etc. Formed and regulated under the LLP Act 2008 passed by the Indian parliament, LLPs enjoy having relatively easy registration process and less regulatory compliance burden compared to other corporate entities.

Since the LLP is a relatively new type of business form, the key advantages that it offers includes protection of owners' liability, flexibility in management, no initial capital requirement, and existence of tax preferences. However, LLPs include limitations such as restricted privileges on accessing capital market, changes in regulations, and challenges frequent to converting to other forms of business structures, meaning that it is less appropriate for large corporations, businesses targeting venture capital, industries regulated by government, publicly held companies, capital-intensive companies and non-profit organisations.

Summing up, the subject of LLPs is indeed necessary for India's business environment as it encourages innovations and entrepreneurship, being suitable for SMEs and professional service firms, with a low-risk exposure.