BUSINESS LAW

UNIT 5: The Limited Liability Partnership Act, 2008

TOPIC- LLP(FEATURES AND NATURE)

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LIMITED LIABILITY PARTNERSHIP(LLP)

- Limited Liability Partnership (LLP) is a hybrid form of business structure that infuses the operational flexibility and tax advantages of a traditional partnership firm with the limited liability and perpetual existence features of a corporate entity. Therefore, it is considered to be an attractive investment option by foreign investors, venture capitalists, professionals and service providers etc. who can go in for this alternative business vehicle.
- Major drawbacks of traditional partnership (**such as existence of mutual agency among partners, unlimited liability and uncertainty of life)** as well as company form of organisation (**such as excessive legal compliance)** have been overcome by LLP form of business organization.
- Section 2(1)(n) of the LLP Act,2008 defines Limited Liability Partnership as 'a partnership formed and registered under this Act'. But considering the nature of an LLP, it can be defined as 'a body corporate having a separate legal entity, with a perpetual existence ,common seal and carrying limited liability'.
- A company registered in India, whether private or public, has to comply with host of complex formalities and incur additional costs for managing affairs including mandatory board meetings, maintaining of statutory records etc. But for LLP, such mandates are not prescribed. Further, it enjoys certain benefits like non applicability of dividend distribution tax, relaxation of many detailed legal and procedural requirements.

LIMITED LIABILITY PARTNERSHIP ACT,2008

- Limited Liability Partnership Act came into force for most of the provisions on 31st March 2009 and for remaining provisions on 31st May 2009 and applies to the whole of India.
- It comprises of XIV chapters, containing 81 sections and 4 schedules. The first schedule is a model set of terms of LLP agreement. The second schedule contains provisions for conversion of a firm into LLP. The third schedule contains provisions for conversion of a private limited company into LLP. The fourth schedule contains provisions for conversion of an unlisted public limited company into LLP.
- Regulatory Framework of LLPs in India

ASPECTS	REGULATED BY
LEGAL	LLP ACT,2008; LLP RULES,2009; LLP(AMENDMENT) RULES ETC.
ADMINISTRATIVE	MINISTRY OF CORPORATE AFFAIRS , REGISTRAR OF COMPANIES
TAXATION	INCOME TAX ACT,1961; VARIOUS FINANCE ACTS
WINDING UP	INSOLVENCY AND BANKRUPTCY CODE,2016; NCLT

SALIENT FEATURES OF LLP

- LLP is a **body corporate**. It is incorporated under the LLP Act,2008. For this, ,two or more persons shall subscribe their names to the Incorporation document; file it along with prescribed fees and other required documents with the concerned Registrar of Companies. If these are found in order, the ROC issues Certificate of Incorporation which grants it the status of the body corporate.
- LLP is an **artificial legal person**.
  - ✓ Artificial → It comes into existence by a process other than natural birth and does not have the physical attributes- like soul, limbs, eyes, ears etc.- that natural persons have.
  - ✓ Legal → It is created after complying with certain formalities. It is intangible, invisible and exists only in the eyes of the law .
  - ✓ Person → Like other persons, it also enjoys certain rights and obligations, for example, it may sue or be sued, it may acquire and/or dispose of properties, it has a name etc.
- LLP is a **separate entity** .This means it enjoys an independent identity distinct from its partners. All the assets and liabilities of the LLP are in the name of LLP only and belong to LLP alone. Partners of LLP shall not have any insurable interest in the property of the LLP. Similarly, the creditors and liabilities of LLP are obligaton of LLP only and shall be paid/met out of the property of the LLP.
- It has **perpetual existence**. LLP enjoys a stable life. Events such as death, insolvency, retirement or resignation of any or all partners do not affect its continuity. It is created through a legal process and can be brought to an end by a legal process only.
- LLP may have a **common seal** and it is not a mandatory requirement. A common seal is a stamp like object with name of the LLP and date of its incorporation engraved on it and used as a substitute for its signature.
- The partners of LLP have **limited liability.** This implies that the obligation of LLP can be settled out from the properties of LLP and will not extend to its partners' personal assets. The liability of the partners shall be limited to the extent of their agreed contribution except in case of unauthorized acts, fraud or negligence committed by them. Creditors of LLP can claim authority over the LLP only and not over the partners or their assets.

SALIENT FEATURES OF LLP

- Minimum and maximum **number of partners** –To form an LLP, minimum 2 partners are required. Further, an LLP shall also have 2 individuals as designated partners of whom, at least one shall be resident in India. There is no limit on maximum number of partners in LLP.
- **Contribution by partners** – In order to garner funds to run the business of LLP, the partners shall contribute to the capital of LLP in accordance with the LLP agreement. The LLP Act does not prescribe any minimum capital contribution and it could be in the form of movable or immovable property, tangible or intangible assets, cash or other benefits such as contracts for service. The monetary value of such contribution shall be accounted for and disclosed in the accounts of the LLP.
- Mutual **rights and duties of partners**. For the smooth working of LLP and avoidance of future disputes, it is desirable to have an LLP agreement containing mutual rights or duties of partners *inter se* and that of LLP vis-a -vis its partners. If there is no LLP agreement then the LLP can adopt the First schedule of the Act which is a model set of LLP agreement.
- **No mutual agency amongst partners**. This implies that every partner of the LLP is an agent of LLP and not of other partners. Therefore, a partner shall not be personally responsible for any wrongful act/omission/misconduct committed by other partners.
- **Whistle blowing by partners or employees-** –The LLP Act provides adequate safeguards and protection to a whistle blower i.e. a person who informs the authorities or public about something wrong or illegal cooking up in the organisation. Sec.31 of the LLP Act provides that if an employee or partner of the LLP has provided useful information and cooperation during the investigation of an LLP for any alleged dishonesty, fraud ,unethical practice or offence, then the Court or Tribunal may reduce or waive off penalty leviable against him. Further he cannot be suspended, removed, demoted, threatened, harassed or discriminated against in any manner merely because of his providing information to the authorities.
- **E filing of documents by partners** – Every form, application or document which is to be submitted under the Act or the Rules shall be filed in prescribed electronic mode on the website www.mca.gov.in after being authenticated by designated partners by affixing digital or electronic signatures.

SALIENT FEATURES OF LLP

- **Business of LLP**- An LLP can be formed to carry any lawful business, trade, profession, service or occupation with a view to earn profit. However, LLPs can't be formed for charitable or philanthropic purposes.
- **Management of LLP-** The business of LLP shall be managed by the partners of LLP. However, for legal compliances, designated partners are responsible
- **Accounts of LLP-** Every LLP shall be required to maintain proper books of account reflecting true and proper view of its state of affairs. Further, every year, it shall file with the Registrar, the Statement of Accounts and Solvency as well as Annual Return within the prescribed time period.
- **Audit of LLP** –As per LLP Rules 2009, every LLP is required to get its accounts audited by a Chartered Accountant if its annual turnover or the contribution exceeds the prescribed benchmark (i.e. annual turnover ≥ Rs 40 lakhs or the contribution ≥ 25 lakhs).
- **Taxation of LLP**- The LLP Act, 2008 does not contain the tax provisions with regard to the LLPs. The Income Tax Act, 1961, has been amended by the successive Finance Acts to provide for tax framework of LLPs. Accordingly, LLP shall be treated at par with the general partnership. However, it shall be liable to alternate minimum tax (AMT) @ 18.5% on adjusted total income. It shall not be liable for Dividend Distribution Tax (DDT).
- **Winding up of LLP** – The LLP can be wound up either by the Tribunal or under Insolvency and Bankruptcy Code, 2016. In order to ensure smooth dissolution, a liquidator is appointed who realizes the assets, pays off the liabilities and distributes the surplus left(if any) amongst the partners .

SALIENT FEATURES OF LLP

- **Conversion into LLP** – A partnership firm, a private limited co. or an unlisted public company can get converted into an LLP in accordance with the provisions of the Act and the relevant schedules attached thereto. In such cases, the earlier entity is deemed to be dissolved and the LLP comes into existence with a new name. Further, all the existing agreements, contracts, pending legal cases, awards etc.of the converting entity are deemed to continue in the hands of the LLP.
- **Conversion of LLP into Joint Stock Company**- Under the Companies Act, 2013 it is possible to for an LLP to get itself registered as company and thereupon, LLP incorporated under LLP Act,2008, shall be deemed to have been dissolved. However, LLP having less than 7 members shall be able to register as a private company.
- **Need based application of Companies Act**. – The Central Government has been given the authority to make applicable, by a notification, any provision of the Companies Act to LLPs with or without suitable modification, adaptations or changes as deemed necessary
- **Non-applicability of the Partnership Act, 1932** – The Indian Partnership Act, 1932, shall not applicable to LLPs.
- **Small LLP**-(This new concept was recently introduced by LLP Amendment Act,2021)- It is an LLP contribution of which does not exceed **25 lakhs**/such higher amount not exceeding 5 crores, as may be prescribed and whose turnover does not exceed **40 lakhs**/such higher amount not exceeding 50 crores as may be prescribed and meets other prescribed requirements. These LLPs will enjoy certain exemptions from some provisions meant for LLPs and will be subject to lesser compliances, lesser fees and lesser penalties compared to normal LLPs.

LLP vs Traditional Partnership vs Limited Company

BASIS	PARTNERSHIP FIRM	LIMITED LIABILITY PARTNERSHIP	LIMITED LIABILITY COMPANY
Regulatory Act	The Indian Partnership Act, 1932	The Limited Liability Partnership Act, 2008	The Companies Act,2013
Registration	Voluntary.	Mandatory.	Mandatory.
Name	Partners can choose any name for their firm	Name of LLP to contain the word Limited Liability Partnership or LLP as suffix.	Name of the public company and p company must end with words "Lim and "Pvt Ltd" respectively.
Body Corporate	It is not a body corporate.	It is a body corporate.	It is a body corporate.
Creation Process	It is created by an agreement between the partners	It is created by a legal process called registration/incorporation under the LLP Act, 2008.	It is created by a legal process calle registration / incorporation invol no. of formalities under Companies Act,2013
Separate Legal Entity	It has no legal identity distinct from its partners	It has a legal identity distinct from its partners	It has a legal identity distinct fr members
Perpetual Existence	It does not have perpetual existence. The death, insanity, retirement or insolvency of the partners may affect its continuity.	It has perpetual existence and is not affected by the death, insanity, retirement or insolvency of its partners.	It has perpetual existence and affected by the death, in retirement or insolvency of its mem
Common seal	Not required	May have a common seal if LLP decides for it.	May have a common seal, if it dec have one
Liability of partners or	Unlimited and can extend up to	Liability is limited up to the extent of	Liability is limited up to the a

BASIS	PARTNERSHIP FIRM	LIMITED LIABILITY PARTNERSHIP	LIMITED LIABILITY COMPANY
Number of members	Minimum – 2 Maximum – 50	Minimum – 2 Maximum – no limit is prescribed	Public limited Company : Min – 7 ; Max – no limit Private Limited Company : Min – 2 ;Max – 200
Basis of mutual rights and duties	Partnersheep Deed	LLP Agreement	Articles of Association and Memorandum of association.
Agency relationship	Every partner acts as agent of the firm as well as of other partners	There is no mutual agency among the partners inter se. Each partner acts as an agent of the LLP but not of the other partners	No mutual agency . Directors can act as agent of the company but not of the members of the company.
Whistle Blowers	No such provision exists.	Protection is provided to the whistle blowers under section 31 of LLP Act	Provision of vigil mechanism provided in Companies Act,2013 is similar to whistle blowing provision under LLP.
Legal Compliances	All partners are liable for legal compliances and penalties under the Act	Only designated partners are responsible for all the compliances and penalties under the Act. Minimum 2 designated partners needed in an LLP	Board is responsible for all the compliances/penalties under the Act. Minimum 2 directors needed in a private company and minimum 3 directors in a public company.
Transfer of interest	A partner can transfer his interest only with the consent of all other partners.	A partner can transfer his interest subject to the provisions of LLP agreement.	A member of public limited can transfer his interest freely without any restriction. However, in a private limited company, there are some restrictions.

LLP vs Traditional Partnership vs Limited Company

BASISe	PARTNERSHIP FIRM	LIMITED LIABILITY PARTNERSHIP	LIMITED LIABILITY COMPANY
Nature of business	Business of the partnership firm must be for profit purposes .	It can be formed for only economic/profit purposes and not for charitable purposes.	It can be created for profit or charitable purposes.
Management of business	The business of partnership is managed by all the partners or any of them acting for all the partners.	The business of LLP is managed by the partners including the designated partners authorized by the agreement	The affairs of the company are managed by the Board of Directors elected by the shareholders.
Mode of maintenance of books of accounts	The Indian Partnership Act 1932 is silent on the mode of maintenance of accounts.	The LLP Act says that the books of account shall be maintained on cash or accrual basis.	It is mandatory for a company to maintain its books of account on accrual basis.
Annual filings	No return/ statement is to be filed with Registrar of Firms.	LLP is required to file these with ROC- -Annual Statement of Accounts & Solvency -Annual Return	A company is required to file number of statements with ROC.
Audit of Accounts	Audit required only if annual turnover of the firm exceeds prescribed limit.	Audit required only if annual turnover or contribution exceeds prescribed limit.	Compulsory irrespective of turnover or capital.
Taxability	It is taxed at prescribed rate + surcharge+ cess. AMT and DDT is not applicable to a partnership firm.	It is taxed at prescribed rate + surcharge+ cess. AMT is applicable but DDT is not applicable to LLP.	It is taxed at prescribed rate+ surcharge+ cess. AMT as well DDT is applicable to a company
Winding up	A Partnership firm can be dissolved without much legal formalities. It can be dissolved by will or gets dissolved on death , insolvency of partners etc.	The winding up of LLP may be either by the NCLT or may be under Insolvency and Bankruptcy Code, 2016	The winding up of companies may be either by the NCLT or may be under Insolvency and Bankruptcy Code, 2016