

“Limited Liability Partnership: Relevance in India”

**Dhruv Chopra*

***Shourya Jindal*

Abstract

The LLP Act was passed in India in the year 2008 after it was first proposed. It is a corporate body that has a separate legal identity from that of its members and combines elements of both partnerships and corporations into a single entity. The provisions of the Partnership Act and the Companies Act have been combined into one document. It makes sense for a limited liability partnership to have that goal in mind. It offers the partners the protection of restricted responsibility in the event that one of the other partners engages in illegal behavior or fails to fulfill their responsibilities. In addition, an LLP is analogous to a general partnership for the purposes of the flow-through taxation system. In compared to the other types, a LLP offers advantages that are both inventive and economical.

Introduction

It has been noted that the legal environment is a crucial component of both the business and the business environment, and the LLP is a relatively novel idea in the Indian corporate world. The 2008 LLP Act governs LLPs in India. "An Act to make provisions for the formation and regulation of LLPs and for matters connected therewith or incidental thereto," is what the lengthy title of the ground-breaking LLP Act, 2008 explicitly indicates. The law from 2008 is divided into 14 Chapters, each of which has 81 Sections and 4 Schedules. A new era of economic growth and development will begin with the passage of the LLP Act, which gives the notion of a partnership a new dimension. The first-ever introduction of limited liability of partners across the entire country is a distinctive feature of this ground-breaking law. This will have significant ramifications for the business sector and all professionals participating in it.

LLP: A Risk Management Tool:

By encouraging increased daring and risk-taking among businesspeople, new opportunities for boosting trade are explored. The LLP is an innovation alone in that direction in the context of the globalized economy, where it is necessary to increase corporate competitiveness and foster an entrepreneurial culture. More than any other piece of legislation in the previous 50 years, limited liability statutes have likely contributed to the nation's business growth. They have permitted and promoted the accumulation of modest funds into big capitals that have been used in undertakings of enormous public usefulness, therefore significantly expanding the wealth of the nation, to the benefit of both investors and the general public.¹

¹ In Re London and Globe Finance Corporation, [1903] 1 Ch 728.

In many cases, a risk management procedure, albeit maybe an unconscious one, will be responsible for the decision to choose an LLP as a business vehicle. Therefore, it stands to reason that the benefits provided by the establishment of the LLP must be maximized. To put it another way, the company must be operated in a way that minimizes the exceptions that reopen the door to potential personal culpability.

States, especially those with a democratic system, frequently respond to the ambitions of their citizens. These goals may be equally commercial, economic, or political in nature. States have occasionally given various company organization structures that the subjects believe will better ensure their commercial objectives regulatory legitimacy. From merely "recognizing" fresh ways of conducting business to "creating" innovative commercial forms, the spectrum of state responsiveness varies. In a globally competitive economy, "India, that is Bharat, which shall be the Union of States, has a wide range of options for choosing the future growth route". Economic worries are seen to extend to the business world as well, and in the modern business world, size of operations has dramatically risen due to technical advancement, entrepreneurial skill, and most importantly, the need of the hour. The LLP combines the limited liability and distinct legal entity status of a company with the ease of conducting business that is characteristic of partnerships.

LLP Evolving Corporate Governance:

The term "corporate governance" first appeared in corporation law possibly about 1975. Business governance has evolved into a notion that is a component of business law today and is no longer just a catchphrase. The titles of studies, publications, corporate governance regulations and recommendations, essays, and other papers all reflect this. Corporate governance is primarily a notion found in that area of law known as corporate law. The area of law known as economic law is substantially broader than company law. "The control of economic activity is the goal of economic law. Antitrust law, finance law, intellectual property law, corporate law, labour law, European Community law", and WTO law are all included in the field of economic law. Legal entities of various shapes and sizes, from the straightforward sole proprietorship to the publicly traded corporation, may engage in economic activity. Company law is designed to control these legal entities. The "Cadbury Report on CG, which was released in the UK in 1992", acknowledged the relationship between the economy and company law by stating that "Country's economy depends on the drive and efficiency of its companies." Company law is mostly of a procedural and organizational type rather than including substantive principles since it is concerned with the regulation of legal entities. In relation to the term "company law," it is important to keep in mind that it applies to more than simply businesses. The sole proprietorship, partnerships, and company or corporation are a few of the legal entities that business law deals with. Now, LLPs are included among the legal business structures.

The LLP: Imbided Financial Disclosures and Key Business Environment Elements

The LLP Act's Chapter VII is dedicated solely to "Financial Disclosures." The following discussion includes these imbided provisions as well as the key crucial aspects that have a significant impact on the business environment:

Compliance: The LLP mandates that Designated Partners, who manage the company and are legally accountable for all regulatory compliance as required by numerous laws in addition to their duty as "partners per se," be nominated. If the designated partner fails to keep the account books, other records, audit, or yearly report, they may be subject to a minimum punishment of Rs. 10,000 and a maximum fine of Rs. 100,000. The minimum fine for making a false statement or concealing a substantial fact is Rs. 1,00,000, and the highest fine is Rs. 5,000, along with a potential sentence of two years in jail. Any designated partner, partner, or affiliate may be requested by the Registrar to, or worker for whatever details he believes necessary to fulfill the Act's requirements. The LLPs are permitted to file necessary papers up to 300 days after their due dates with additional costs, however if there is a delay of 300 days or longer; the LLPs will be accountable for paying regular filing fees, extra expenses, and legal action. This provision was made to ensure compliance management. The LLP Act also allows for the compounding of offenses that carry a single, fixed-price penalties.

Transparency: The aforementioned accounting principles, required disclosures, and compliance obligations all contribute, the LLP are creditworthy businesses that are open about their finances. Suppliers and traders who conduct business with LLPs can feel quite secure about their dealings. On payment of a charge of Rs. 50, customers can view the papers related to incorporation, the information of the "partners (and any changes made therein), the statement of account and solvency, and the annual return. The price for a certified copy or extract of any document is Rs. 5 per page. In comparison to traditional partnership firms and sole-proprietorship forms of business entities, it is predicted that banks and other financial institutions will feel more satisfied and at ease lending financial assistance in the form of loans and limits to LLPs due to the greater degree of element of transparency".

Whistle-Blowing: Disclosure in the public interest refers to the act of disclosing instances of wrongdoing and corruption that have been committed by individuals either within or outside of an organization. The information relates to the violation of laws, rules, and regulations; ineffective management that endangers public health and safety; financial irregularities, fraud, and record-keeping problems; the theft of assets and money; and exploiting one's position in government for personal benefit. Whistle-blowers play an essential role in the fight against corruption, fraud, and other forms of malfeasance because they expose the unethical behaviour of authorities working for businesses and other organizations. In the wake of high-profile corporate scandals in the United States, including as those involving Enron, Tyco, Quest, Global Crossings, and WorldCom, as well as the Xerox fiasco, the concept has acquired substantial traction in the country. Recent instances of fraud and swindling in India. The LLP Act has several measures that, on the one hand, protect the rights

of whistle-blowers and, on the other hand, encourage them to speak out against any unlawful conduct that may be taking place. In spite of the fact that the RBI was the organization that originated the whistle-blowers program, the SEBI has also incorporated a whistle-blower policy into Clause 49 of the Listing Agreement. Clause 49, on the other hand, is a clause that is entirely discretionary and only applies to publicly traded companies.

At this juncture, it is vital to make a point of remarking on the fact that ICICI Bank, Tata, Infosys, and Wipro have all taken the effort to create whistle-blower policies in their respective companies.

LLP impact on MSMEs

Global awareness for the MSME as the engine of economic growth and the promoter of equitable development has grown in recent years. The employment potential of the sector at low capital cost is by far its biggest advantage. Small and medium-sized firms have a labour intensity that is much higher than large organizations. In most countries, over 90% of all enterprises are MSMEs, which are also known for having the quickest rates of job growth and making major contributions to both industrial output and exports. MSMEs are crucial to India's wider industrial sector, where they also play a significant role. Compared to the entire industrial sector, the MSME sector has regularly had stronger growth rates in recent years. The industry has demonstrated commendable inventiveness and adaptation to withstand the current economic crisis and recession thanks to its agility and dynamism. The development and expansion of the MSME is essentially the responsibility of the SGs. However, the Indian government offers a variety of initiatives to help the state governments in their endeavours. With an estimated 26 million businesses and being governed by the "Micro, Small & Medium Enterprises Development Act of 2006", MSMEs are a significant part of the commercial landscape, adding 1.3 million jobs annually, giving employment to over 70 million people. It accounts for around 45% of manufacturing production and 40% of overall exports of the nation, creating more than 8000 high-quality items for the Indian and worldwide markets.

The fact that 94% of MSME enterprises are operated as proprietorships and partnerships, which often fall under the unorganized sector, and that only 3% of MSME are established as companies, attests to the excruciatingly long list of legal and procedural criteria. It is said that the absence of the corporate form in the MSME sector is mostly due to high compliance costs and extensive regulatory supervision, as opposed to sole proprietorship and partnerships, which enjoy total freedom and low compliance costs. But in exchange for this benefit, the industry suffers greatly from lack of access to technology and low-cost, accessible borrowing.

MSMEs in industrialized nations like the US, UK, Singapore, Australia, and others frequently use the LLP format as a company structure. The LLP structure has now allowed this industry to benefit from the combined advantages of reduced compliance with increased access to credits⁶⁴ and market technology in India as well. The sensitive business climate for

MSMEs is ascribed to the high number of start-ups offset by the significant number of departures of MSMEs, but now the LLP provides MSMEs an easier access to corporatization and its associated benefits of revival and exit. Another benefit for MSME is that only LLPs with revenues and contributions of more than Rs. 40 lakhs and Rs. 25 lakhs, respectively, are required to have their accounts audited in accordance with the legislation, giving them greater freedom.

The LLP structure would be most advantageous to MSME since it would enable an entrepreneur to enter the firm without exposing his whole portfolio to it, allowing them to capitalize on each other's strengths and increase their competitiveness in the global market. Being a member of a partnership company or sole proprietorship with unlimited personal responsibility is seen as hazardous and undesirable in an increasingly litigious business climate, while on the other hand, the corporation form is expensive for MSME. The effective instrument of LLP creates a barrier between the two risks so that an entrepreneur may launch a company endeavour without worrying about being held accountable for the partner's bad behaviour.

LLP: As members of Stock Exchange

The "SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992" provide LLPs the right to join stock exchanges and register as stock brokers. Due to the recent passage of the LLP Act by the Indian Parliament, LLPs are not expressly included in the "Securities Contract (Regulation) Rules, 1957". The LLP Act defines LLP as a body corporate. The "Securities Contract (Regulation) Rules" Rule 8 Sub-Rules (4A) and (5) provide that partnership businesses and LLP are eligible to be accepted as members of stock exchanges. The LLPs can therefore be compared to partnership businesses and limited liability companies.²

The SEBI, the capital market regulator, has added Rule 19A to its Rules in this respect; By-laws and regulations that make it easier for the LLP to become a member of the exchange as well as the aforementioned revision have now been published in government gazettes. The modified provision is as follows: LLP that were established and registered in accordance with the LLP Act of 2008 are eligible to be elected as members of the Exchange, subject to the terms and restrictions that may be established from time to time by SEBI and/or the Exchange. The LLPs must be granted membership by the stock exchanges. After the LLPs adhere to the regulations outlined in the Securities Contract (Regulation) Rules, 1957, membership will be granted.

² Securities and Exchange Board of India, Circular No. CIR/MIRSD/12/2011, dated July 11, 2011 issued by Shri B.N. Sahoo, Deputy General Manager, SEBI.

LLP- Comparison with Existing Business Forms

Sr. No.	Basis	Partnership	Company	LLP
1.	Outset	A Partnership Firm is created by valid Contract	It is created by Law	It is created by Law
2.	Registration	Optional	Mandatory with RoC	Mandatory with RoC
3.	Separate Legal Entity	There is no distinct legal entity	There exists a distinct legal entity under the CA, 2013	LLP is a Body Corporate, hence there exists a distinct legal entity
4.	Succession	It does not have eternal succession per se; nonetheless, this is decided by the partners.	Its members are free to join and leave at any time.	Its partners are free to join and leave at any time.
5.	Legal Proceedings	Registered Partnership can only sue the 3 rd Party	Company can sue and can be sued as it's a legal entity	LLP can sue and can be sued as it's a legal entity
6.	Foreign Involvement	In India, foreign nationals are not permitted to create partnerships.	Foreigner can be a member	Foreigner can be a Partner
7.	Common Seal	No Concept of Common Seal as its not a distinct entity	Company always has a common seal	LLP may or may not have a common seal depending on the terms of the agreement
8.	Asset Ownership	Partners have joint ownership	Company has the ownership in its name	LLP has ownership in its name
9.	Liability of Partners or Members	Unlimited: Partners are equally and severally	Usually restricted to the minimum payment due on	Limited, to the degree of their contribution to

		accountable for the firm's and each other's acts, and this obligation extends to their personal assets.	each share.	the LLP, excluding intentional fraud or a partner's unlawful act of omission or conduct.
10.	Dissolution	By agreement, permission of both parties, insolvency, certain unforeseen circumstances, and by judicial order.	Either voluntarily or on the NCLT's edict	Either voluntarily or on the NCLT's edict
11.	Interest Transferability	Subject to the terms of the partnership agreement, a partner may transfer his stake.	A member may willingly transfer his interest	A partner may willingly transfer his interest
12.	Meetings	Regarding the conducting of any official meetings, there are none.	BM and GM must be held at the appointed hour.	Regarding the conducting of any official meetings, there are none.
13.	Filings	There is no need to submit a return to the RoC.	Every year, AFS and AR must be submitted to the RoC.	Annual filings with the Registrar of LLP are required to include the Annual Statement of Accounts, Solvency Report, and Annual Return.

Analysis:

The aforementioned comparison shows that different business formats in the Indian business environment have their own entities based on advantages and drawbacks.

A partnership firm, for instance, offers flexibility in internal organization, right to managerial participation, without any public announcements.

The benefits of a company, however, include unlimited members, permanent succession, and restricted responsibility for stockholders.

However, the LLP idea adopts a corporate structure, combining the organizational flexibility of a partnership business with the benefit of limited liability for its participants.

LLP impact on Economic Growth

It has been noted that the response the LLP corporate vehicle received became the centre of attention. India will be in a stronger position thanks to the LLP law to boost its global competitiveness and join the ranks of countries that are successfully transforming to the knowledge economy. At a time when the LLP is at its most optimistic, India can unquestionably achieve major economic advantages by developing trade and business policies that prioritize exploiting its vast knowledge base more efficiently to increase both the general productivity of the economy and the welfare of its population. The MCA-21 e-governance project, which encourages paperless transactions, includes LLPs in order to streamline administrative processes.

Conclusion

The LLP Act of 2008 was enacted as a legislative reaction to the changing expectations placed on businesses in the modern era. The formation of LLPs will present professional partnerships with a helpful new choice for reducing the risk of being held liable for damages, provided that the implementation of this change is carried out appropriately. In view of the recent growth in the Indian service sector, LLPs would further contribute to that growth, and it is predicted that a large number of existing enterprises, both public and private, will convert to LLP status in order to take advantage of the benefits offered by LLPs. In India, the LLP concept was conceived with the intention of adopting a corporate form of firm that provides members of partnership businesses with the benefits of limited liability and organizational flexibility.