



Limited liability partnership in India

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Abstract

The legal quandary articulated above also applies to the virgin concept of Limited Liability Partnerships. The new corporate vehicle of Limited Liability Partnership is promulgated to address the existing vacuum between the partnership law and the company law. The Limited Liability Partnership law is basically a nuptial knot between the philosophical ideology of company law and partnership law in order to address the deficiency in the domain of small scale business sector, professional sector & venture capital sector and to accelerate the speed of India's economic growth by developing entrepreneurial skills for the promotion of micro, small & medium enterprise besides professional and venture capital sector etc.

Keywords: limited liability partnership, concept, advantage, structure, India

1. Introduction

"Sometimes the difference between the clear, standard case or paradigm for the use of an expression and the questionable case is only a matter of degree. A man with a shining smooth pate is clearly bald; another with a luxuriant mop clearly is not; but the question whether a third man, with a fringe of hair here and there, is bald might be indefinitely disputed, if it were thought worthwhile or any practical issue turned on it... Sometimes the deviation from the standard case is not a mere matter of degree but arise when the standard case is in fact a complex of normally concomitant but distinct elements, some or one of which may be lacking in the cases open to challenge. Is the flying boat a 'vessel'? Is it still 'chess' if the game is played without a queen? Such questions may be instructive as they force us to reflect on, and make explicit, our conception of the composition of the standard case..."

– Professor H.L.A. HART^[1]

The legal quandary articulated above also applies to the virgin concept of Limited Liability Partnerships. The new corporate vehicle of Limited Liability Partnership is promulgated to address the existing vacuum between the partnership law and the company law.

1 H.L.A. Hart, *The Concept of Law*, 4 (2005). Herbert Lionel Adolphus Hart (July 18, 1907 to December 19, 1992) was an influential legal philosopher of the 20th century. He was Professor of Jurisprudence at Oxford University and the Principal of Brasenose College, Oxford. His most famous work is 'The Concept of Law'.

The Limited Liability Partnership law is basically a nuptial knot between the philosophical ideology of company law and partnership law in order to address the deficiency in the domain of small scale business sector, professional sector & venture capital sector^[2] and to accelerate the speed of India's economic growth by developing entrepreneurial skills for the

promotion of micro, small & medium enterprise^[3] besides professional and venture capital sector etc.

1.1 Concept of LLP

Limited Liability Partnership entities, the world wide recognized form of business organization has been introduced in India by way of Limited Liability Partnership Act, 2008. A hybrid model of business that embraces to cover the flexibility of partnership along with the advantages of the limited liability of a company at a low compliance cost. Such Limited Liability Partnerships are intended to be created for the purpose of supporting the small scale industries and service sector enterprises.

The concept of Limited Liability Partnerships in India along with the need of setting up the Limited Liability Partnerships in place of partnerships and limited companies. Here we will see the various taxation aspects in view of Limited Liability Partnerships that covers Income Tax, Wealth Tax, Service Tax and

- 'Venture Capital' is an important source of finance for those small and medium-sized firms, which have very few avenues for raising funds. Although such a business firm may possess a huge potential for earning large profits in the future and establish itself into a larger enterprise. But the common investors are generally unwilling to invest their funds in them due to risk involved in these types of investments. In order to provide financial support to such entrepreneurial talent and business skills, the concept of venture capital emerged
- The President of India under notification dated May 9, 2007 has amended the Government of India (Allocation of Business) Rules, 1961. Pursuant to this amendment, the Ministry of Agro and Rural Industries (Krishi Evam Gramin Udyog Mantralaya) and the Ministry of Small Scale Industries (Laghu Udyog Mantralaya) were merged into a single Ministry, namely, "Ministry of Micro, Small

and Medium Enterprises” (Sukshma Laghu Aur Madhyam Udyam Mantralaya). And Sales Tax/Value Added Tax. Here we will discuss the issues pertaining to them that need to be addressed in order to effectively implement the Limited Liability Partnerships in India. Then it will be concluded that in near future, more Limited Liability Partnerships will come into existence given its advantages over the partnership and company form of organization in India.

1.2 Definition of LLP

A Limited Liability Partnership is a hybrid between a company and a partnership that, as the name suggests, provides the benefits of limited liability and allows its members the flexibility of organizing their internal structure as a partnership based on a mutually arrived agreement^[4].

Section 2(n) of Limited Liability Partnership Act 2008 Define as “Limited Liability of Partnership formed and registered under this act.”

Section 2(m) of Limited Liability Partnership Act 2008 Define as the “Foreign Limited Liability of Partnership means Limited Liability of Partnership formed, incorporated or registered outside India which establishes a place of business with in India.”

1.3 Meaning of limited liability partnership

“A Corporate business vehicle that enables professional expertise and entrepreneurial initiative to combine and operate in flexible, innovative and efficient manner, providing benefits of limited liability while allowing its member the flexibility for organizing their internal structure as a partnership”^[5].

1.4 Nature and structure of LLP

LLP is an alternative corporate business form that gives the benefit of limited liability of a company and the flexibility of a partnership. The LLP is a separate legal entity, is liable to the full extent of its assets but liability of the partners is limited to their agreed contribution in the LLP. It has perpetual succession and a common seal and can sue and be sued in its own name^[6]. It can continue in its existence, irrespective of the changes in the constitution of partners. It is capable of entering into contracts and holding property in its own name^[7]. Further, no partner is liable on account of the independent or unauthorized actions of other partners, thus individual partners are shielded from joint liability created by another partner’s wrongful business decisions or misconduct. It is organized and operates on the basis of an agreement, without imposing detailed legal and procedural requirements of a joint stock company. The mutual rights and duties of the partners within a LLP are governed by this agreement. Thus, since LLP contains elements of both ‘a corporate structure’ as well as ‘a partnership firm structure’ LLP is called a hybrid between a company and a partnership^[8].

1.5 Advantages of LLP form

LLP form is a form of business model which:

- is organized and operates on the basis of an agreement.
- provides flexibility without imposing detailed legal and procedural requirements

Enables professional/technical expertise and initiative to combine with financial risk taking capacity in an innovative and efficient manner LLP & Other Worlds The LLP structure is available in countries like United Kingdom, United States of America, various Gulf countries, Australia and Singapore. On the advice of experts who have studied LLP legislations in various countries, the LLP Act is broadly based on UK LLP Act 2000 and Singapore LLP Act 2005. Both these Acts allow creation of LLPs in a body corporate form i.e. as a separate legal entity, separate from its partners/members.

Qualifications for becoming a partner^[10]

Any individual or body corporate may be a partner in a LLP. However an individual shall not be capable of becoming a partner of a LLP, if-

(a) He has been found to be of unsound mind by a Court of competent jurisdiction and the finding is in force;

- He is an undischarged insolvent; or
- He has applied to be adjudicated as an insolvent and his application is pending.

Requirements in respect of “Designated Partners”

Appointment of at least two

“Designated Partners” shall be mandatory for all LLPs.

“Designated Partners” shall also be accountable for regulatory and legal compliances, besides their liability as ‘partners, per se’.

A “Designated Partner”^[11]

Every LLP shall be required to have at least two Designated Partners who shall be individuals and at least one of the Designated Partner shall be a resident of India. In case of a LLP in which all the partners are bodies corporate or in which one or more partners are individuals and bodies corporate, at least two individuals who are partners of such LLP or nominees of such bodies corporate shall act as designated partners. LLPs, particularly those as may be engaged in the services or technology-based sectors, may provide services globally. This may require any number of its partners to locate them abroad. In view of liability structure of partners, designated partners and LLP, clearly provided for in the Act, there does not appear to be any necessity and justification for restriction relating to designated partners to out-number partners located abroad. In fact it may pose unnecessary restriction. Requirement of ‘Identification number’ of Designated Partner Every Designated Partner would be required to obtain a “Designated Partner’s Identification Number” (DPIN) on the lines similar to “Director’s Identification Number” (DIN) required in case of directors of companies. Enabling provisions have been made to prescribe under rules conditions, which would have to be fulfilled by an individual who is eligible to be appointed as a ‘Designated-Partner’.

LLP AGREEMENT¹²

The mutual rights and duties of partners inter se and those of the LLP and its partners shall be governed by the agreement between partners or between the LLP and the partners. This Agreement would be known as “LLP Agreement”. As per provisions of the LLP Act, in the absence of agreement as to

any matter, the mutual rights and liabilities shall be as provided for under Schedule I to the Therefore, in case any LLP proposes to exclude provisions/requirements of Schedule I to the Act, it would have to enter into an LLP Agreement, specifically excluding applicability of any or all paragraphs of Schedule.

2. Salient features of the LLP Act OF 2008 ^[13]

The salient features of the LLP Act of 2008 are as follows:-

1. The LLP will be an alternative corporate business vehicle that would give the benefits of limited liability but would allow its members the flexibility of organizing their Internal structure as a partnership based on an agreement.
2. The proposed Bill does not restrict the benefit of LLP structure to certain classes of professionals only and would be available for use by any enterprise which fulfills the requirement of the Act.
3. While the LLP will be a separate legal entity, liable to the full extent of its assets, the liability of the partners would be limited to their agreed contribution in the LLP. Further, no partner would be liable on account of the independent or un-authorized actions of other partners, thus allowing individual partners to be shielded from joint liability created by another partner's wrongful business decisions or misconduct.
4. LLP shall be a body corporate and a legal entity separate from its partners. It will have perpetual succession. Indian Partnership Act, 1932 shall not be Applicable to LLPs and there shall not be any upper limit on number of partners in an LLP unlike an ordinary partnership firm where the maximum number of partners cannot exceed.
5. An LLP shall be under obligation to maintain annual accounts reflecting true and fair view of its state of affairs. Since tax matters of all entities in India are addressed in the Income Tax Act, 1961, the taxation of LLPs shall be addressed in that Act.
6. Provisions have been made in the Bill for corporate actions like mergers, Amalgamations etc.
7. While enabling provisions in respect of winding up and dissolutions of LLPs have been made in the Bill, detailed provisions in this regard would be provided by way of rules under the Act.

3. Understanding limited liability partnership in brief

- Limited Liability Partnership was introduced by way of Limited Liability Partnership Act 2008 (LLP Act 2008) notified on 1st April 2009.
- LLP Act 2008 contains 14 Chapters, 81 Sections , 4 Schedules and 31 Forms
- LLP is a Body Corporate
- It is a Legal entity separate from its partners
- It has Perpetual succession
- Can own assets in its name, sue and be sued.
- Name to contain 'Limited Liability Partnership' or 'LLP' as suffix.
- Unlike corporate shareholders, the partners have the right to manage the business

83. Government order No.11/3/2003-CL.V passed by the Government of India dated 10th January 2003. directly

- One partner is not responsible or liable for another partner's misconduct or negligence.
- Liability of the partners is limited to their agreed contribution in the LLP
- Unlimited Liability in case of Fraud
- The Business of LLP should be 'for profit' business only
- Contributions by Partners may be tangible, intangible, movable or immovable.
- Partner may lend money to and transact other business with LLP.
- Any individual or body corporate can be a partner.
- Minimum of 2 partners and no maximum limit.
- Minimum 2 individuals as Designated Partners, of whom at least one shall be resident in India.
- Every Designated Partners must obtain Designated Partner Identification Number (DPIN) from the Central Government. In case you already have a DIN (Director Identification Number), the same can be used as a DPIN.
- The mutual rights and duties of the partners of LLP and the mutual rights and duties of LLP and its partners shall be governed by LLP agreement between the partners or between LLP and its partners.
- In the absence of such agreement relationship of Partners and LLP would be governed as per Schedule 1 of LLP Act, 2008.
- LLP shall maintain books of accounts.
- A Statement of Accounts and Solvency (SAS) to be prepared within 6 months from each Financial Year
- Annual Return of LLP must be filed with Registrar of LLP
- Audit of the accounts is required only if the contribution exceeds Rs. 25 lakhs or annual turnover exceeds Rs.40 lakhs.
- Tax issues of LLP addressed under the Income Tax Act 1961 separately
- Income-tax - 30% of total income with education cess of 3%. Effective tax rate is 30.90%. No Surcharge would be levied on LLPs taxable amount.
- Multi Disciplinary Professional LLP can be formed
- Indian Partnership Act, 1932 shall not apply to LLP.
- Applicability of Companies Act, 1956 will be directed by Central Government by notification in Official Gazette.
- Concept of Whistle Blower has been introduced
- The Cabinet Committee of Economic Affairs (CCEA) approved Foreign Direct Investment (FDI) in LLP on 11th May, 2011
- Foreign Investment is allowed in LLP only with Foreign Investment Promotion Board (FIPB) Approval. Under FDI Policy, Foreign Investment in Limited Liability Partnership is allowed with specific approval of the Government. However, FDI in LLPs is allowed only under those sectors where 100% FDI is otherwise allowed under automatic route and subject to other specified conditions.

4. The followings are some conditions with respect to FDI in LLP's-

- LLPs with FDI will not be eligible to make any downstream investments.
- Foreign Capital participation in LLPs will be allowed only by way of cash consideration.
- Investment in LLPs by Foreign Institutional Investors

(FIIIs) and Foreign Venture Capital Investors (FVCIs) will not be permitted.

- LLP's are not allowed to raise foreign currency loans

5. Need for Enactment of Limited Liability Partnership Act

"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, the need has been felt for a new corporate form that would provide an alternative to the traditional partnership, with unlimited personal liability on one hand, and 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^[14]." The existence of Limited Liability Partnership (LLP) which has its genesis in general partnership is now a reality in India with the enactment of the, the Minister of Company Affairs, explains the object of this new device of organization. Limited Liability Partnership Act, 2008, (LLP Act) from March 31, 2009^[15]. It was felt that the Companies Act, 1956 (Companies Act) is not suited to the liability and governance structure intended for LLPs. The overall intent of the legislation to regulate widely held companies is different. Therefore, in accordance with the recommendations of the Irani Committee, it was felt appropriate to bring a new legislation for LLPs. According to the concept paper on Limited Liability partnership prepared by the Government of India in 2005, in view of the increasing role of service sector in Indian economy, a need was recognized for introduction of a new corporate entity Limited Liability Partnership that would combine the characteristics of corporate and non corporate entities. The administration and enforcement of partnership firms under the Indian Partnership Act, 1932 (Partnership Act) is at the State level. Besides, a partnership firm involves full joint and several liabilities of the partners^[16]. Because of this, many enterprises engaged in biotech, information technology, etc. find traditional partnerships unsuitable. Also, the traditional partnership firms are very unsuitable for multidisciplinary combinations like the combination of lawyers and accountants, which is the hot combination today. Thus, the LLP Act is intended to remove the gulf which exists between a company governed by the Companies Act and a general partnership firm governed by the Partnership Act^[17].

- Sanjiv Agarwal, Genesis and concept of Limited Liability Partnership, Consolidated Commercial Digest, Vol. 23 Part 3, p. 178
- Pollock & Mulla, The Indian Partnership Act, p. 439
- Kartikey Mahajan, Limited Liability Partnership Act: a long way forward, International Company and Commercial Law Review, Issue 6, 2009, p. 20

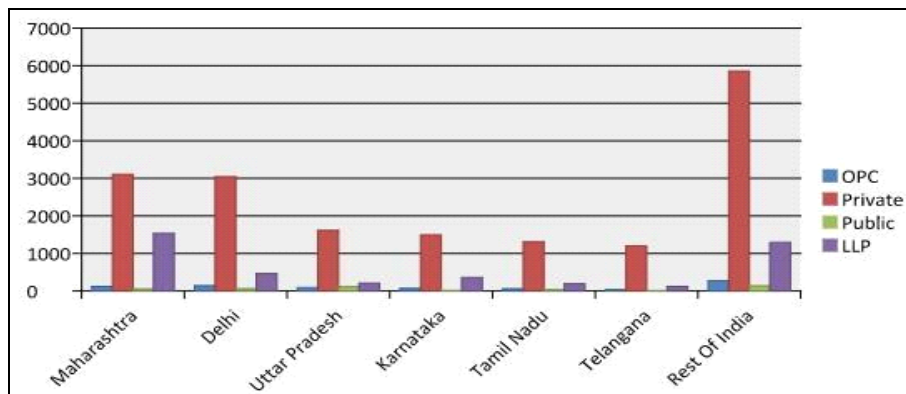
The limited liability partnership is viewed as an alternative corporate business vehicle that provides the benefits of limited liability but allows its member the flexibility of organizing their internal structure as partnership based on a mutually arrived agreement.

The LLP form would enable entrepreneur, professional, 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 for and for investment by venture capital. The two primary reasons for introducing LLP were the Risk Factor and the enhanced global competitive advantage to the Indian professionals.

Regulatory framework as prevailing today

- Due to restrictions (supra) under Companies Act, 2013, LLP emerges as better option. Businesses can survive, only if funds are freely available;
- Character of Limited liability and perpetual succession continues under LLP;
- No Stringent penalty provisions in LLP Act unlike Companies Act;
- Like Companies, Foreign Direct Investment (FDI) in LLP is permitted.
- Loan to a partner or to the concerns in which a LLP partner holds beneficial interest is not subjected to any violation, as well, it is out of ambit of 'deemed dividend implications' under Income Tax Act, which is scary provision applicable to closely held companies;
- No Dividend Distribution Tax applicable to LLP;
- No monetary restriction on related party transactions except specific restrictions under Income Tax Act, which is common for all forms of entities.
- Perquisite rules not applicable in respect of transaction with partners;
- Stringent provisions of carry forward of loss in case of company are relaxed while dealing under LLP;
- Unlike company, LLP is not subject to Wealth Tax provisions, but partners are in their own respective manner;
- Mechanism of computation of Alternate Tax on profits is rationalized under LLP. Out of 10 startups, more than five do not have any knowledge about legal terms All they have is an idea, but are not sure how to and from where to start. In the last three months, we have seen that in the Incorporation of Legal Entities there has been an almost 26% rise in private limited company formation and also One Person Company (OPC) formation is also increasing. Every month more than 5,000 businesses are incorporated in India and, out of these legal entities, more than half are in three states only i.e. in Delhi, Maharashtra, Uttar Pradesh.

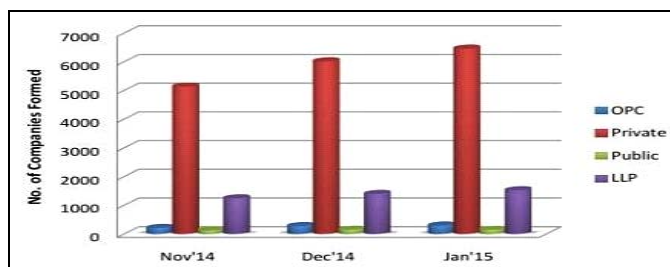
Let us look at the facts



(Source: for the above charts: mca.gov.in)

Fig 1

Also, please look after how much the growth of company formation in last three month is



(Source: for the above charts: mca.gov.in)

Fig 2

6. Application of the LLP regime^[18]:

Law may be enacted to provide for establishing LLP. The LLP form might initially be made available only to those providing defined professional services like lawyers, company secretaries, accountants and the like.

- To be eligible for this form of partnership, the profession must be governed by a regulatory enactment that adequately controls and disciplines, errant professional conduct.
- The Department of Company Affairs may notify such professions from time to time. LLP may be extended, at a later stage, to other services and business activities once the experience gained with the LLP form of organization

7. Comparison between traditional Partnership and LLP

Table 1

Traditional Partnership	Limited Liability Partnership
Distinctions	
Unlimited personal liability of each partner for dues of the partnership firm. Personal property of each partner also liable.	No personal liability of partner, except in case of fraud.
Written agreement not essential.	Incorporation document essential.
Partnership can be registered under Partnership Act. Registration is not mandatory.	LLP is incorporated under LLP Act. Incorporation is mandatory.
Not a legal entity separate from its Partners	It is a legal entity separate from its partners, having perpetual succession
Property cannot be held in name of partnership firm.	Property can be held in name of LLP.

Partnership deed/agreement is executed. Even verbal agreement is valid.	Incorporation Document [*] is required to be executed. In addition, LLP Agreement is required in almost all cases, though such LLP agreement is not mandatory.
Documents are required to be filed with Registrar of Firms (of respective State)	Registrar of Companies (ROC) is the administrating authority.
Death of partner dissolves a firm, in absence of agreement	Death of partner does not dissolve LLP.
Minimum two and maximum twenty Partners	Minimum two partners. No limit on maximum number of partners
Each partner can take part in business of firm.	Each partner can take part in business of firm, but LLP Agreement can provide to the contrary.
All partners are liable for statutory compliances under Partnership Act	Only designated partners are liable for statutory compliances as are required under LLP Act (not necessarily in respect of other Acts).
Partner cannot enter into business with firm, though he can give loan to firm.	Partner cannot enter into business with firm, though he can give loan to firm.
Every partner of firm is agent of firm and also of other partners. He can	Every partner of LLP is agent of LLP but not of other partners. Thus, he can
bind partnership firm as well as other partners by his acts	bind LLP by his acts but not other partners. However, LLP agreement can restrict powers of individual partner.
Filing of accounts, statement of solvency and annual return not required.	Filing of accounts, statement of solvency and annual return not required.
Partnership can be _at will [*] i.e. any partner can resign or dissolve firm	Individual partner can resign but cannot dissolve the LLP.
Death of partner dissolves partnership unless there is contract to contrary	Death of partner does not dissolve LLP.
Public notice is required for retirement of a partner.	Filing of return of retirement of partner with ROC is required, but no provision for public notice of retirement of partner.
Partnership firm can be dissolved	LLP can be would up.
No specific provision to enter into compromise, arrangement, amalgamation, reconstruction etc. This can be done only under civil laws.	LLP can enter into compromise, arrangement, amalgamation, reconstruction etc.
Minor can be admitted to benefit of partnership.	There is no specific provision to admit minor to benefit of partnership. It is doubtful if this can be done.
Similarities	
Partner is not employee of firm	Partner is not employee of LLP.
Liability of a person for _holding out [*] , i.e. representing himself as partner, though he is not	Liability of a person for _holding out [*] i.e. representing himself as partner, though he is not
Partner of firm entitled to remuneration only if partnership agreement so provides	Partner of LLP entitled to remuneration only if LLP agreement so provides
New partner can be introduced only with consent of all existing partners	New partner can be introduced only with consent of all existing partners, unless LLP Agreement provides otherwise.
Insolvent person cannot continue as partner of firm.	Insolvent person cannot continue as partner of LLP.
Rights of partnership can be assigned	Rights of partnership can be assigned
Partner liable to firm for any personal profits made by him by use of property, name or business connection of firm.	Partner liable to LLP for any personal profits made by him by use of property, name or business connection of LLP
Partner cannot undertake competing business without consent of other Partners	Partner cannot undertake competing business without consent of LLP. Otherwise, liable to account for and pay profits to LLP
Partner liable to firm if he commits fraud.	Partner liable to LLP if he commits fraud.

Table 2: Comparison between company and LLP

Company under Companies Act	Limited Liability Partnership
Distinctions	
Memorandum is to be filed with ROC	Incorporation Document is required to be filed
Memorandum should contain State in which incorporated.	Incorporation Document is not required to contain State in which incorporated. Thus, registered office can be changed to any place in India just by informing ROC subject to prescribed conditions.
Name to contain Limited [*] or Private Limited [*]	Name to contain Limited Liability Partnership [*] or _LLP [*]
Articles are to be filed at the time of incorporation. Private company must have Articles. In case of public company, provisions of Table A apply if there are no Articles.	LLP Agreement is required to be filed later. In absence of LLP Agreement, mutual rights and duties will be as specified in first schedule to LLP Act, 2008. Thus, practically, each LLP must have LLP Agreement, though not mandatory.
Managing Director and Whole time Director to look after day to day administration.	Designated Partner to look after statutory compliances. Otherwise, all partners can look into affairs of the LLP. However, LLP can delegate powers to some partners who may be designated as _Managing Partner [*] , or _Executive Partner [*] or any other name
Individual director or member does not have authority in conduct of business of company.	Every partner has authority to conduct business of LLP, unless the LLP Agreement provides to contrary

Restrictions on remuneration to director as per Companies Act	No restriction on remuneration to partner. Remuneration should be provided in LLP agreement
Notice of change of director is to be given by company.	A partner who has resigned from LLP can himself file notice of his resignation to ROC.
Share, share certificate, register of members, transfer and transmission of shares etc. required.	No requirement of share and share certificate. Hence, no question of its issue, allotment, transfer, rectification of register etc.
Board meetings, general meetings are required.	No provision for regular meeting of Board and members. Partners can decide when and how to meet, delegation of powers etc. Provision is made that LLP should maintain minute book
Charges are required to be registered	No provision for registration of charges.
Elaborate records and registers are required to be maintained	No records and registers have been Prescribed
Restrictions on Board regarding some specified contracts, contracts in which directors interested, investments, loans and guarantees to other Companies	Partners are free to enter into any contract.
Disclosures required of contracts where directors are interested	No requirement of disclosures required of contracts where partners are interested, unless specified in LLP Agreement.
Elaborate provision relating to redressal in case of oppression and Mismanagement	No provision relating to redressal in case of oppression and Mismanagement
Specific provisions relating to nidhis, NBFC	No specific provisions relating to nidhis, NBFC
Similarities	
Limited liability and perpetual Succession	Limited liability and perpetual Succession
Must have common seal	Common seal is optional
Provisions of approval of name, change of name are similar	Provisions of approval of name, change of name are similar.
ROC is the administrative authority	ROC is the administrative authority
Provisions of name, its approval and change are similar.	Provisions of name, its approval and change are similar.
No personal liability of individual director or member [except of director of private company in some cases like income tax and sales tax dues].	No personal liability of partner, except in case of fraud
Complicated procedure for change of registered office, particularly when change is to other State	Simple procedure to change registered office of LLP anywhere in India just by informing ROC and following prescribed conditions
Registrar of Companies (ROC) is the administrating authority	Registrar of Companies (ROC) is the administrating authority
Memorandum and Articles, details of directors, accounts, annual return, special resolutions etc. filed by LLP with ROC will be available for public	Incorporation document, details of partners, accounts, statement of solvency and annual return filed by LLP with ROC will be available for
Inspection	public inspection
Powers to Central Government to inspect records of company and to order investigation	Powers to Central Government to inspect records of company and to order investigation
Provisions of compromise, arrangement or reconstruction of companies are similar	Provisions of compromise, arrangement or reconstruction of LLP
Company can be wound up voluntarily or by order of Court ROC can strike off name of defunct company.	LLP can be wound up voluntarily or by order of Court ROC can strike off name of defunct LLP.

9. Corporate Governance in LLP structure¹⁷

Corporate Governance

In the LLP form of business structure is ensured by mandatory provisions, for example: firstly, two individuals must be designated partners; the responsibility for accounts and compliance with the LLP law rests with them. Penalty for default in compliance is imposed on them in their individual capacity. Secondly, the relevant partner has to face individual liability for any wrongful act, or omission, or for any act with fraudulent intent. Thirdly, the LLP Agreement must have provisions in critical specified areas; otherwise the provisions of First Schedule to the LLP Act 2008 will mandatorily apply.

10. Business Activities of LLP

Section 11(1) of the LLP Act 2008 states that two or more persons associated for carrying on a lawful business with a view to profit can incorporate a LLP. Therefore, a LLP cannot be created for non-profit making activities and existence of

business is a pre-requisite for the legal existence of LLP. There is no exact universal definition of business, however generally in its most broadest meaning it includes all activity by the community of suppliers of goods and services. The expression 'business' is defined in the Income Tax Act, 1961, as any trade, commerce, manufacture or any adventure or concern in the nature of trade, commerce or manufacture. Section 2(1) (e) of the LLP Act 2008 has defined the term 'Business' to include every trade, profession, service and occupation'. However, the Act does not define the terms trade, profession, service and occupation.

11. Multidisciplinary Partnerships

At the outset it is clarified that the LLP framework is not restricted to professional services alone as was earlier recommended by Naresh Chandra Committee. The LLP law has been touted as ushering in an era of organisations offering multi-disciplinary services. The World Trade Organisation

(WTO) is mounting pressure on India for opening up of the multi-disciplinary professional services as a single window operation for the various multiplying foreign investors in India. LLP will give the professions the much needed impetus of global presence and level playing field against their foreign counterparts. Currently, firms of the above professionals have partners from their own discipline. For instance, a CA partnership can have only CAs as its partners. But under the LLP model, CAs and CSs or even advocates can set up multi-disciplinary firms, which would act as a "one-stop" shop for people to avail various professional services.

Duration of LLP

The duration of an LLP may be

- Perpetual
- For Particular Event
- For Specific Job

12. Micro, Small and Medium Enterprises (MSME)

LLP has an immense role to play in the Manufacturing Sector. Around 95% of industrial units in the country are SMEs (Small and Medium Enterprises) and the manufacturing sector is dominated by these SMEs. LLP has an immense role to play in the Manufacturing Sector. Over 90% of these SMEs are registered as proprietorships, about 2% to 3% as partnerships and less than 2% as companies as per a survey conducted by the ministry of small-scale industries. The reason of absence of Corporate Form in the manufacturing Sector is high compliance cost. Vice - Versa the presence of Proprietorship is due to complete flexibility and less compliance cost. But for this gain the sector is losing the credit facility from the bankers. Now the Limited Liability Partnership form has opened the door for MSME Sector to enjoy the dual advantage of less compliance with higher access to credits in the market. Another advantage for SMEs that in the new LLP form, only the Limited Liability Partnership having turnover/contribution of more than Rs. 40/25 Lacs have to get their accounts audited as per the requirement of law providing a step ahead in the flexibility. The LLP form of business would also promote entrepreneurship, particularly in relation to the knowledge-based industries such as the information technology and biotechnology sectors.

1. H.L.A. Hart, *The Concept of Law*, 4 (2005). Herbert Lionel Adolphus Hart (July 18, 1907 to December 19, 1992) was an influential legal philosopher of the 20th century. He was Professor of Jurisprudence at Oxford University and the Principal of Brasenose College, Oxford. His most famous work is 'The Concept of Law'
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