

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed Edition :

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume 2 Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

IJLRA

EDITORIAL TEAM

EDITORS



Megha Middha

Megha Middha, Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar

Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



Dr. Namita Jain



Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8 Articles in various reputed Law Journals. Conducted 1 Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and

learning.

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS

ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

ANALYSIS OF THE LIMITED LIABILITY PARTNERSHIP ACT, 2008

AUTHORED BY - DR. POOJA AGRAWAL

There are different forms of business organization prevalent in India and the world with ownership, control, liability, membership and capital distinguishing them from each other. One chooses a form of business organization depending upon the nature of business, duration of business, size of operation, level of control required, capital structure and its requirement, participation of non promoter group, government regulation and control, distribution of profit, risk management and management structure.

NATURE AND STRUCTURE OF LLP

LLP is an alternative corporate business form of business organisation that gives the benefit of limited liability of a company and the flexibility of a partnership. It has a separate legal entity where the liability of 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.

It has a continued existence irrespective of the changes in the constitution of partners. It is capable of entering into contracts and holding property in its own name. Further, no partner is liable on account of the independent or un-authorized actions of other partners, thus individual partners are shielded from joint liability created by other partner's wrongful business decisions or misconduct. The mutual rights and duties of the partners within the LLP are governed by an agreement which is the basis for the formation of LLP. Thus, LLP is a hybrid form of business organization which contains elements of both 'a corporate structure' and 'a partnership firm structure'. Also, it provides the flexibility without imposing detailed legal and procedural requirements, enabling professional expertise and initiative to combine with financial risk taking capacity in an innovative and efficient manner.¹ The advantage of the LLP form would be that it will not impose detailed legal and procedural requirements intended for large widely held companies on such

¹ *Braving The Waters: A Guide For Tennessee's Aspiring Entrepreneurs*, Spring 2007, Tennessee Journal of Business Law, 243

enterprises. In this way it will also be useful for small enterprises.²

LIMITED LIABILITY PARTNERSHIP BILL, 2008

Due to the advantages and the needs of the business environment the Limited Liability Partnership Bill, 2008 was drafted and introduced in the Rajya Sabha. Minister of Corporate Affairs, presented the Bill for consideration and passage by the House. All members supported it, thereby giving it the nod of the Rajya Sabha.³ Thereafter Bill was introduced in the Lok Sabha and same was passed by the House on 11 December, 2009.

LIMITED LIABILITY PARTNERSHIP ACT 2008

The LLP Bill received the assent of the President of India on January 7, 2009 and it became the LLP Act, 2008. The Government of India vide Notification S.O. 891(E), in the Official Gazette of India, has appointed the 31st Day of March, 2009 as the date on which the various sec of LLP Act become applicable. Now any two or more persons engaged in a lawful activity for profit may avail of the LLP form of organization.

FORMATION OF THE LLP

Section 2(k) of the LLP Act has defines “limited liability partnership” to mean a partnership formed and registered under this Act. This stipulates two requirements:

- a partnership and;
- the need for its registration.

Thus the registration of the LLP has been made compulsory under the proposed Act.

Clause 3 of the Act provides that a limited liability partnership is a body corporate formed and incorporated under this Act and which has legal entity separate from that of its partners; and which has perpetual succession; and any change in the partners of a limited liability partnership shall not affect the existence, rights or liabilities of the limited liability partnership. Since the LLP would be a partnership having distinct legal identity, the provisions of the Indian Partnership Act, 1932 would not be applicable to LLPs as provided under Section 4 of the LLP Act.

² Limited Liability Partnership Bill, 2008 passed by Rajya Sabha, Press Information Bureau dated Oct. 24, 2008

³ *Supra* note 2

INCORPORATION OF LLP

Section 11 and 12 of the Act contain provisions concerning the formation and incorporation of the LLP. The LLP may be incorporated by two or more persons associated to carry on a lawful business with a view to profit. The registering authority will be the Registrar of Companies under the Companies Act. The ROC would register the incorporation document and issue a certificate of incorporation within fourteen days on completion of all formalities specified under the Act. After incorporation, every LLP shall ensure that its name, address of its registered office, registration number and a statement that it is registered with limited liability is mentioned on all its invoices, official correspondence and publications. Section 13 confers the status of an incorporated body. Accordingly, the LLP shall, by its own name have the power of—

- suing and being sued;
- acquiring, owning, holding and developing or disposing of property, both movable and immovable;
- having a common seal; and
- doing and suffering other such other acts and things as bodies corporate may lawfully do and suffer.

LIMITED LIABILITY PARTNERSHIP AGREEMENT

The most important document of a limited liability partnership is the limited liability partnership agreement. “Limited liability partnership agreement”⁴ has been defined under Sec. 2(1) as ‘any written agreement between the partners of the limited liability partnership or between the limited liability partnership and its partners which determines the mutual rights and duties of the partners and their rights and duties in relation to limited liability partnership’. The mutual rights and duties of partners of an LLP *inter se* and those of the LLP and its partners shall be governed by an agreement between partners or between the LLP and the partners subject to the provisions of the proposed legislation. In absence of any agreement the rights and obligations of the partners shall be governed by the provisions of the Act.

⁴ Sec. 2(1).

PROCEDURE FOR INCORPORATING LIMITED LIABILITY PARTNERSHIP ACT

The LLP Act provides a framework for regulating the business affairs of limited liability partnerships. It also defines what constitutes a partnership, how it can be formed, dissolved, and other important terms related to this type of entity.

Incorporating a limited liability partnership is a procedure to create the legal entity known as a limited liability partnership. The articles of incorporation for a limited liability partnership must include the following:

- The name, address, and registered agent of the LLP
- The name, address, and registered agent of each general partner
- The name and address of each member
- The date when formed the LLP was formed
- A brief statement about what type of business or profession is being conducted by the LLP.

PARTNERS OF THE LLP

In accordance with Section 6 (1) every LLP must have a minimum of two partners⁵. If at any time, the number of partners of a limited liability partnership is reduced below two and the limited liability partnership carries on business for more than six months while the number is so reduced, the person who is the only partner carrying on business after the six months and having the knowledge of being so, shall be personally liable for the obligations of the limited liability partnership incurred during that period⁶. In the LLP Act there is a concept of ‘designated partner’, which is defined as a partner designated as such⁷. According to Sec 7(1), every LLP must have at least two designated partners, both of whom must be individuals and at least one of them must be a resident of India. If there is a vacancy to the post of a designated partner for more than 30 days or if there is only one designated partner at any period of time, then every partner shall be a designated partner. Thus the Act seeks to create a special status for a designated partner.

⁵ Sec. 6(1).

⁶ Sec. 6(2).

⁷ Sec 7.

- Extent and Limitation of Liability

The LLP will be a legal entity which trades with limited liability for its members. Chapter V Act comprising Sections 26 to 30, deals with the 'Extent and Limitation of Liability' of members of the LLP. Section 26 provides that every partner of LLP is the agent of LLP, but not of the other partners. According to Section 27 a limited liability partnership is not bound by anything done by a partner in dealing with a person, if,

- the partner in fact has no authority to act for the limited liability partnership in doing a particular act; and
- the person knows that he has no authority or does not know or believe him to be a partner of the LLP.

An obligation of the LLP, whether arising in contract or otherwise, is solely the obligation of the LLP. The liabilities of the LLP have to be met out of the property of the LLP. Under Section 28, a partner is not personally liable, directly or indirectly, for an obligation referred to in Section 27(3), solely by reason of being a partner of the LLP. By Section 29, in the event of an act carried out by the LLP, or any of its partners, with the intent to defraud creditors of the LLP or any other person, or for any fraudulent purpose, the liability of the LLP and its partners who acted with the intent to defraud creditors or for any fraudulent purpose shall be unlimited for all or any of the debts or liabilities of the LLP. The obligation of a partner to contribute money or property for a LLP shall be as per the LLP agreement. In the absence of any provision to contrary in the LLP Agreement, all partners are entitled to share equally in capital, profits and losses of LLP.⁸

BOOKS OF ACCOUNT, OTHER RECORDS AND AUDIT

Each LLP is required to maintain books of account at its registered office for the financial year³. Every LLP shall be required to file an annual return signed by designated partners with the ROC within 60 days of closure of its financial year. Every LLP shall be required to get its accounts audited as per the prescribed rules. As per Rule 24 (8) a limited liability partnership whose turnover does not exceed, in any financial year, forty lakh rupees, or whose contribution does not exceed twenty-five lakh rupees shall not be required to get its accounts audited. However, if partners of such LLP decide to get the accounts of such LLP audited, the accounts shall be audited

⁸ Sec. 32

in accordance with the rules prescribed under the LLP Rules 2009. Provided also that where the partners of such LLP do not decide for audit of the accounts of the LLP, such LLP shall include in the Statement of Account and Solvency a statement by the partners to the effect that the partners acknowledge their responsibilities for complying with the requirements of the Act and the Rules with respect to preparation of books of account and a certificate in the form specified in Form 8. The statement of accounts and solvency and annual return filed by each LLP shall be available for inspection with the ROC.

ASSIGNMENT AND TRANSFER OF PARTNERSHIP RIGHTS

The rights of a partner to a share of the profits and losses of the LLP and to receive distributions in accordance with the LLP agreement are transferable either wholly or in part. The transfer of any rights by any partner would not by itself cause the disassociation of the partner or a dissolution and winding of an LLP. The transfer of rights would not entitle the transferee or assignee to participate in the management or conduct of the activities of the LLP or access information concerning the transactions of the LLP.⁹

MERGERS AND WINDING UP OF LLPS

Section 58 of the LLP Act provides for compromise, arrangements or reconstruction of LLPs. Section 59-61 talk about the winding up and dissolution of a limited liability partnership. Winding up of an LLP may be either voluntary or by the Tribunal. The various grounds of winding up of an LLP by a tribunal are⁵:

- If the LLP decides (by resolution) that the LLP would be wound up by the tribunal;
- If the number of partners of the LLP is reduced below two;
- If the LLP is unable to pay its debts;
- If the LLP has acted against the interests of the sovereignty and integrity of India, the security of state or public order;
- If the LLP has made a default in filing with the Registrar the statements of accounts and solvency or annual return for any five consecutive financial years;
- If the tribunal is of the opinion that it is just and equitable that the LLP be wound up.¹⁰

⁹ D.S.R. Krishnamurthi, *Added value of LLP Bill 2008*, (2008) SEBI & Corp. Law 120

¹⁰ Vikramditya Singh Malik, *The Latest Hybrid in India: Limited Liability Partnership*, www.cisd.soas.ac.uk/~/limitedliabilityconference_preconfinalprogramme_160707.pdf

After the enforcement of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'Code') the winding of corporate entities are within the purview of the Code. Section 59 of the Code deals with voluntary liquidation of an LLP. The rationale is that voluntary liquidation under the Code is applicable to a corporate person. LLP which has to undergo voluntary liquidation process must fulfil certain conditions under the Code and must follow the process as prescribed under IBBI (Voluntary Liquidation) Regulation, 2017. Code provides provisions which should be undertaken in restructuring and reviving a corporate debtor. Additionally, the NCLT has the power to pass any order for liquidation of a corporate debtor including an LLP. Section 59(1) of the Code provides that a corporate entity which intends to voluntarily liquidate itself and shall meet all the conditions and procedural requirement prescribed by IBBI may proceed to initiate voluntary liquidation under Chapter V of Part II of the Code.

INVESTIGATION INTO THE AFFAIRS OF AN LLP

Sections 42 to 53 of Chapter IX deal with provisions relating to investigation into affairs of an LLP on certain mentioned grounds. The Central Government *suo moto* or on recommendations of the NCLT or any Court may appoint inspectors to carry out the investigations. These provisions also contain powers of inspectors for search or seizure, and regarding the evidentiary value of their reports and expense relating to such activities.

CONVERSION INTO LIMITED LIABILITY PARTNERSHIP

The LLP Act contains enabling provisions pursuant to which a firm which was set up under the Indian Partnership Act, 1932 and private company or unlisted public company incorporated under the Companies Act, 1956 would be able to convert themselves into LLPs.

Section 55 of LLP Act 2008 provides that- "A firm may convert into a limited liability partnership in accordance with the provision of this Chapter and the Second Schedule". Clause 3 of Second Schedule to LLP Act 2008 provides that- "A firm may apply to convert into limited liability partnership in accordance with this Schedule if and only if the partners of the limited liability partnership in to which the firm is to be converted, comprise, all the partner of the firm and no one else."

Section 56 of LLP Act 2008 provides that- "A private company may convert into a LLP in accordance with the provision of this Chapter and the Third Schedule"; and Sec.57 of LLP Act

2008 provides that- “An unlisted public company may convert into a LLP in accordance with the provision of this Chapter and the Fourth Schedule”. Accordingly, Clause 2(2) (b) of Third Schedule and Clause 3(b) of Fourth Schedule of the LLP Act 2008 provides that- “A company may apply to convert into limited liability partnership in accordance with this Schedule if and only if the partners of the limited liability partnership in to which the firm is to be converted, comprise, all the shareholders of the company and no one else.”

To sum it up, the Indian Partnership Act, 1932 sets out special rules relating to the liability of partners to persons dealing with them. A partner acts as the agent of the firm and of other partners for the purpose of the business of the firm. Further, every partner is liable, jointly and severally, with all the other partners, for all acts of the firm done while he is a partner.¹¹ The unlimited liability for partners in case of general partnerships has become an increasing cause for concern in the light of general increase in the incidence of litigation for professional negligence, the size of claims and the risk to a partner’s personal assets when a claim exceeds the sum of the assets of the partnership. The ‘unlimited liability’ of partners has been the chief reason why partnership firms of professionals, have not grown in size to successfully meet the challenges posed today by international competition, WTO, GATS¹².

Bearing in mind the needs of the buoyant Indian economy, and also to keep pace with international business standards, the Indian Parliament has in its wisdom seen fit to introduce the concept of a limited liability partnership in India. This form of business organization would enable entrepreneurs and professional to form commercially efficient vehicle situated to their requirement.

¹¹ S.D. SINGH, J.P. GUPTA, LAW OF PARTNERSHIP IN INDIA, p. 213

¹² Rajesh Dhawan, *Limited Liability Partnership – an overview*, (2008) 88 SEBI & Corp. Law (Mag) 133.