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Analysis of Chapters II, IV, V and VI of the Limited Liability Partnership Act, 2008

Authored By- Harsh Mangalam

Abstract

The government of India introduced the concept of Limited Liability Partnership in 2008; the idea was to give partnerships in the country a corporate identity while not making them ultimately a company; it differed from either a traditional partnership firm or a company enough to get its recognition. An LLP enjoys the freedom of non-rigid compliances and having partners instead of members while also having limited interference from regulatory authorities, all of which a company has to bear. The introduction of LLP has proved crucial as people who did not want to go through the hassle of creating a Company and a traditional partnership firm was not feasible, can now create a partnership firm. Forming an LLP is relatively easy as the number of required documents and the overall filings required is far less, and there is only one charter document, The Limited Liability Partnership Agreement. The Act discusses the nature and process of forming an LLP, partners' eligibility, management of an LLP, and other requirements.

Key Words: Limited Liability Partnership, Corporate, Separate Legal Entity, Partnership Firm.

Introduction

With the expansion of the Indian economy, both the entrepreneurs and the technical and professional people there have gained recognition on a global scale. It is considered appropriate that risk capital, knowledge, and entrepreneurship work together to boost India's economic progress further. With this in mind, a new corporate form has been required to give an

alternative to the conventional partnership with unlimited personal responsibility on the one hand and the statute-based governance structure of the limited liability companies on the other. An LLP is seen as an alternative corporate business vehicle that gives the benefits of limited liability but enables its members to structure their internal structure as a partnership based on a mutually negotiated agreement. The fundamental goal of the LLP form is to make it possible for business owners, professionals, and companies involved in any service provision or scientific and technological disciplines to establish cost-effective commercial vehicles that meet their needs. Due to the LLP's adaptability in terms of structure and operation, it would also be a good vehicle for venture capital investments and small businesses.

The Government of India introduced the LLP Act in 2008 to give partnerships a corporate identity and make the regulation much more robust. This Act has allowed many entrepreneurs to establish a corporate identity without forming a company. At present, there are more than 10,000 LLPs registered under this Act. An LLP is a better form of association when compared to a Partnership Firm as it gives it a separate legal identity, and the compliances that an LLP has to follow are not that complicated.

The study is being done to understand the concepts under the various chapters of the Limited Liability Partnership Act, 2008. The chapters being analysed are Chapter II: Nature of Limited Liability Partnership, Chapter IV: Partners and their Relations, Chapter V: Extent and Limitation of Liability of Limited Liability Partnership and Partners, and Chapter VI: Contributions. The study will also consider The Limited Liability Partnership (Amendment) Act, 2021.

Chapter II of the Limited Liability Partnership Act, 2008

This chapter discusses the nature of a Limited Liability Partnership. It characterises it as a body corporate founded and incorporated in accordance with this Act and is a separate legal entity from its partners. A body corporate is defined under section 2 (11) of The Companies Act, 2013 as including a company incorporated outside India but does not include- (i) a co-operative society registered under any law relating to co-operative societies; and (ii) any other body corporate (not being a company as defined in this Act), which the Central Government may,

by notification, specify in this behalf. Except for a co-operative society, all companies, including those formed in and outside of India, fall within the definition of a body corporate. A company is a more specific phrase than a body corporate since a company only refers to companies registered in India. Still, a body corporate comprises all entities incorporated in India or outside of India.¹

An LLP also has perpetual succession, meaning the partners may come and go, but the corporate body goes on forever; till legally wound up. It means that unlike a Partnership Firm or a Sole Proprietorship which can be easily wound up as per the wish of the owners, this is not possible in the case of an LLP, which has to follow many steps for winding up². The Act also specifies that if any change in the partners of an LLP takes place, it will not affect the existence of the LLP.

Partners of an LLP can be any person, be it natural or legal; a natural person will not be able to become a partner in an LLP if they have been; legally declared to be of unsound mind, or is an undischarged insolvent, or but has a pending application to be declared as an insolvent³.

An LLP at any time shall at least have two partners; if at any time, due to any reason, the number of partners goes below the required number and the LLP continues to carry on business for more than six months, with such a reduced number, then the remaining partners shall have personal and unlimited liability towards the outsiders for the obligations incurred during that period. An LLP shall have at least two designated partners who are individuals, and at least one shall be a resident in India. In case all the partners of an LLP are body corporates, then nominees to such body corporates shall be appointed as the designated partners. The names of the initially designated partners are to be mentioned in the incorporation document (LLP Agreement). Every designated partner shall have a Designated Partner Identification Number (DPIN); if a designated partner already bears a Director Identification Number (DIN), the DIN shall prevail⁴. Unless a contract to the contrary is made, then every designated partner shall be

¹ Ekta Ahlawat, Understanding the concept of Body Corporate, CA Club India,

<[² Shubham Ojha, Why choose LLP? Ability of an LLP to contract and sue, LegalWiz, <\[>\]\(https://www.legalwiz.in/blog/understanding-the-ability-of-an-llp-to-contract-sue-etc\).](https://www.caclubindia.com/articles/body-corporate-44848.asp#:~:text=A%20body%20corporate%20is%20defined,the%20Companies%20Act%2C%202013%20as&text=WHEREAS%20Body%20Corporate%20includes%20all,for%20a%20Co%2Doperative%20Society.>.</p></div><div data-bbox=)

³ Who can be a member of Limited Liability Partnership, LLP Wala (June 5th 2018), <<https://www.llpwala.com/blog/who-can-be-a-member-of-a-limited-liability-partnership->>.

⁴ Designated Partner Identification Number (DPIN), India Filings, <[>](https://www.indiafilings.com/learn/designated-partner-identification-number).

liable responsible for carrying out all acts, matters, and things that the limited liability partnership is required to carry out to comply with the provisions of this Act, including filing any documents, returns, statements, and reports of a similar nature in accordance with those provisions and as may be specified in the LLP agreement, and for paying any fines imposed on the LLP for any violations of those provisions. A new designated partner shall be appointed within thirty days of the vacancy arising, and applicable requirements shall be followed if no designated partner is appointed, or if at any time there is only one designated partner, each partner shall be deemed designated partner.

Chapter IV of the Limited Liability Partnership Act, 2008

This chapter ascertains who the partners are and their relations to the LLP. Upon the incorporation of a limited liability partnership, the persons who have subscribed their names to the LLP agreement shall be its partners. Any other person may become a partner of the limited liability partnership by and in accordance with the LLP agreement. All the rights, duties, and liabilities of the partners of an LLP shall be governed by the LLP agreement as agreed upon by all the partners.

A person may cease to be a partner of an LLP in accordance with the LLP Agreement, or a person may cease to be a partner upon their death or dissolution of the LLP, or they have been declared to be legally insane, or if he has been declared to be insolvent. Such cessation does not discharge a partner from any obligation they incurred while being a partner. The former partner shall be entitled to all the rights vested in the LLP Agreement.

Chapter V of the Limited Liability Partnership Act, 2008

This chapter explores the topic of the extent and limitations of an LLP and its partners. Every partner in an LLP for the purpose of business is an agent of the LLP and not of the other partners; unlike that in a partnership firm in which each partner is an agent to one another, the term 'agent' has been defined under section 182 of the Indian Contract Act, 1872, as a person

who another has employed to do an act, or to represent the employer in dealings with third persons, the person who appoints an agent is said to be the 'principal'. In this case, neither partner would be a principal of another partner; instead, all the partners are agents of the LLP itself, which is the principal⁵. An LLP shall not be responsible for the acts of a partner if the partner has no authority to do such an act and the person knows that the partner has no authority over such an Act. The LLP shall be liable for the commission or the omission of action of a partner if it was done during the course of business or if the Act was within the authority of the said partner. Partners are not liable for the obligations of the LLP as their liability towards the partnership is limited. No partners' personal properties can be used to pay the debts and dues of the LLP, and the property of the LLP shall be used to meet its obligations. Under the LLP structure, the partner's liability is limited to his agreed contribution.

Further, no partner is liable for the independent or unauthorised acts of other partners, thus allowing individual partners to be shielded from joint liability created by another partner's wrongful acts or misconduct⁶. A partner shall not be personally liable, directly or indirectly, arising out of the contractual obligations of an LLP simply because he is the partner of such LLP. Although a partner shall be held personally liable for the commission or omission of acts that are ultra vires to him, no other partner that was not involved in such Act shall be held liable.

If any person represents themselves as an LLP partner, they are liable to any such person who gives credit to the LLP on the faith of such representation. Apart from the person making the representation or being represented, the LLP shall also be liable to the extent of the credit or any financial benefit the partnership receives. If a partner's business is carried on in the same limited liability partnership name after their passing, the continued use of that name or the deceased partner's name as a part of it will not by itself subject the partner's estate to liability for any actions taken by the limited liability partnership after that partner's demise.

If an activity has been carried out by an LLP or any of its partners with an intention to defraud any person, the liability of the LLP and the partners so responsible for such an act; shall be

⁵ Vihanka Narasimhan, all you need to know about a Limited Liability Partnership, iPleaders Blog (February 28th 2022), <<https://blog.iplayers.in/all-you-need-know-about-limited-liability-partnership/>>.

⁶ FAQs on Nature of Limited Liability Partnership, Ministry of Corporate Affairs; Government of India, <<https://www.mca.gov.in/MinistryV2/natureoflimitedliabilitypartnerneshiplp.html#:~:text=Under%20LLP%20structure%2C%20liability%20of,partner's%20wrongful%20acts%20or%20misconduct.>>>.

unlimited for all of the obligations of the LLP. If a partner carried out the Act, the LLP should only be liable to the extent as the partner unless the LLP can prove that such Act was done without the knowledge or the authority of the LLP. Any person found guilty of such Act mentioned above shall be punished with a prison sentence of up to 2 years and a fine worth minimum Rs. 50,000, which may go as high as Rs. 5,00,000. Suppose the LLP, its partner, designated partner, or its employee conducts any affairs of the LLP fraudulently, without any interruption to any criminal proceedings against such person. In that case, they shall be liable to pay compensation to any person that has suffered due to such conduct. The LLP should not be liable if the Act were ultra vires⁷. A partner or employee of an LLP that provides valuable information during an investigation of such LLP or provides any information that leads to the conviction of the LLP or its employee or partner then such person shall be eligible to have their penalty waived or reduced at the discretion of the tribunal or court. The chapter also protects employees of partners or employees who have provided information regarding the LLP or its partners; such partners or employees shall not be subject to any form of discrimination against the terms and conditions of the LLP or the employment.

Chapter VI of the Limited Liability Partnership Act, 2008

A partner may contribute towards the LLP in any manner; the contribution may be tangible, movable or immovable or intangible property or money, promissory notes or any other form of contribution or services. The monetary value of the contribution of each of the partners shall be disclosed in the accounts of the LLP⁸. The obligation to contribute of each partner shall be as per the one agreed upon in the LLP Agreement.

Conclusion

The above study explained the concepts of Chapter II, Chapter IV, Chapter V and Chapter VI

⁷ Dr. Sanjiv Agarwal, LIMITED LIABILITY PARTNERSHIP-PART-XII - (Unlimited Liability in case of Fraud), Tax Management India (March 29th 2010), <https://www.taxmanagementindia.com/visitor/detail_article.asp?ArticleID=738>.

⁸ FAQs On Partners' Contribution and Transactions of Partners With LLP, Ministry of Corporate Affairs; Government of India, <mca.gov.in/MinistryV2/partnerscontributionandtransactionsofpartnerswithllp.html#:~:text=Partner's%20contribution%20may%20consist%20of,be%20prescribed%20in%20the%20rules.>>.

of the Limited Liability Partnership Act, 2008, by analysing various sections and sub-sections of the Act and considering the Act's amendment passed in the year 2021. The study also looked into the Indian Contract Act, 1872 and blogs, articles and explanations available. The study was done to analyse the nature and features of a Limited Liability Partnership, its partners' relations and liabilities towards various persons, and the methods of contributions by the partners.

