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Need for Introduction of Limited Liability Partnership in India

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ABSTRACT

The purpose of this paper is to understand the necessity of introduction of Limited Liability Partnership in India. This paper helps in understanding the basic concept on an LLP and its features. The paper briefly discusses why an LLP is the need of the hour for businesses in India and how it will help the economy. It also analyses various case laws and acts relating to this type of partnership. The paper throws light on the current stance of LLP in India. Various research papers and articles on LLP have been reviewed. Lastly, suggestions to improve the LLP framework have also been mentioned.

Keywords: LLP, hybrid, business, partner, corporate.

I. INTRODUCTION

Limited Liability Partnerships, or "LLPs" are a type of business that combines certain benefits of partnerships with those of corporations. An LLP is regarded as an "alternate or hybrid corporate vehicle" because it gives its members the freedom to arrange their internal management structure as a partnership based on mutual understanding, while also limiting their liability to the amount of their partnership interest, which corresponds to the distinct legal personality of a company. In *Edlinger v. United States*, the liability of a partner to the extent of their interest in the partnership or act or omission was upheld².

Due to the benefits that the LLP business model provides, legislation has been passed in many jurisdictions to incorporate and govern LLP operations. Although the idea of an LLP was first proposed by the 7th Law Commission of India in 1957, it was not until March 2009 that it obtained statutory recognition in India through the Limited Liability Partnership Act, 2008.³ The number of LLP registrations in India is increasing, and traditional unlimited partnerships are being converted to LLPs, providing them a desired status in the Indian corporate environment. On July 30, 2021, the Limited Liability Partnership (Amendment) Bill, 2021, was introduced in

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² *EDLINGER v. U.S.* | No. 3:10-cv-148. | 20100415a41 | Leagle.com Leagle, <https://www.leagle.com/decision/infdco20100415a41> (last visited Sep 17, 2022)

³ Bhumes Verma, LLPs In India - All You Want To Know - Corporate and Company Law - India Mondaq.com (2016), <https://www.mondaq.com/india/corporate-and-company-law/552322/llps-in-india--all-you-want-to-know> (last visited Aug 25, 2022).

the Rajya Sabha. The 2008 Limited Liability Partnership Act is being modified by this bill.

An organisation created and registered under the aforementioned Act is an LLP. The succession of a limited liability partnership shall be perpetual. Any changes to a limited liability partnership's partners have no bearing on the entity's existence, rights, or obligations. In *Hosking v. Marathon Asset Management LLP*(2016), it was held that the profit share of a partner or a LLP member can potentially be subject to forfeiture where the partner or member has breached their fiduciary duties to the partnership⁴.The LLP agreement is a written pact between a limited liability partnership and its partners, or between a limited liability partnership and its partners, that specifies the partners' mutual rights and obligations and those of the partners with respect to the partnership.⁵

(A) Research questions:

1. How has the concept of limited liability partnership evolved in India?
2. What is the need for establishment of limited liability partnerships in India?
3. How has limited liability partnership helped a business and what is its significance?
4. What is the similarity between LLP in India and United Kingdom?

(B) Research objectives:

1. To discuss the evolution of the concept of limited liability partnership in India.
2. To determine the need for establishing limited liability partnerships in India.
3. To evaluate the significance of limited liability partnerships and how it has helped business.
4. To analyse the similarity between LLP in India and United Kingdom.

(C) Limitations of the study:

1. Very repetitive content available on websites.
2. Limited number of scholarly research papers which acted as a hinderance in writing an expansive review of literature.

(D) Review of literature:

1. Suvansh Majmudar, *The Era of Limited Liability Partnership*, 4 INT'l J.L. MGMT. &

⁴ *Hosking v Marathon Asset Management LLP* [2016] EWHC 2418 (Ch) | One Essex Court | OEC Oeclaw.co.uk, <https://www.oeclaw.co.uk/news/view/hosking-v-marathon-asset-management-llp-2016-ewhc-2418-ch> (last visited Sep 17, 2022)

⁵ Ishita Ramani, *India LLP Act 2008 and all you need to know about LLP in India* TaxGuru (2020), <https://taxguru.in/corporate-law/india-llp-act-2008-llp-india.html> (last visited Aug 25, 2022).

HUMAN. 4584 (2021).

This paper discusses the evolution of the concept of LLP in India. It was first brought up on the recommendation of the 7th Law Commission in 1957. Thereafter, in various committees it was suggested that the LLP form be initially restricted to those that offer certain professional services, such as attorneys, company secretaries, and accountants. The profession must be managed by a regulatory Act that effectively supervises and disciplines improper professional conduct in order for this type of partnership to be permitted. Furthermore, once the experience gained with the LLP form of organisation has been assessed and tested, LLP may be later expanded to additional services and economic operations.

2. Bobbala Jyothirmai, Limited Liability Partnership Suitable to Emerging Enterprises in Current Trends, 3 INT'L J.L. MGMT. & HUMAN. 432 (2020).

This paper throws light on the LLP Act of 2008 and its various features like it is a body corporate and legal entity separate from its owners, mutual rights and duties between partners, profit distribution, winding up, taxation policy and more. It also talks about the advantages and disadvantages of LLP.

3. Ananya K., LLP in Changing Business Scenario, 2 Jus Corpus L.J. 285 (2021).

This paper evaluates the demand for a simplified partnership model that utilised all the advantages of the partners' act while doing away with the strict guidelines of the same developed due to the shifting nature of company. A typical business model might not be appropriate in the current generation, which is characterised by an increase in entrepreneurial ideas and younger generations beginning their own businesses. Additionally, there has been an increase in small-scale enterprises and online businesses due to the pandemic, but the way in which these firms were formed is different.

4. P. Govindan, A Study on Growth of Indian Corporate Sectors - A Paradigm Shift to Entrepreneurial Development in India, 5 SMS Journal of Entrepreneurship and Innovation (2018)

This paper analyses how LLP is an innovative vehicle for entrepreneurial development in a country like India. It assesses the trend of registration of LLPs in India after implementation of Companies Act 2013 and Goods and Services Tax Act 2017.

5. Sourabh Srimala & Anjali Mittal, Limited liability partnership: Viable option of business in India, 15 VIDHIGYA: The Journal of Legal Awareness, 17-24 (2020)

This paper assesses the diverse facets of LLP regarding its origin, significance, legislative

framework, and dissolution, along with its flaws and challenges. It has been identified as a potential unique business platform that offers protection from unlimited obligations while also allowing members to organize their internal structure.

II. NEED FOR LLP IN INDIA

The risk element and the increased global competitive advantage provided by Indian expertise were the two key justifications for LLP implementation. In the event of a business collapse, only the responsible partner would be held responsible. There would be no way to levy the private property of the other members. This lowers the risk associated with unlimited partnership liability and introduces the concept of limited liability from company law to make such bodies more competitive globally. In the coming years, it's possible that a sizable pool of Indian specialists would offer the many beneficial services to the global clientele. However, having unlimited responsibility as a partner company in a litigious environment is actually quite risky. Therefore, a new corporate structure with limited liability and a flexible work environment had to be established as an alternative to the conventional partnership in order to operate efficiently and provide competition on the global market.⁶

Numerous Indian professionals, including advocates/lawyers, chartered accountants, and physicians, are prohibited from practising in corporations. The LLP structure would be very beneficial for providing such expert services in the modern era of completely honest client satisfaction on a global scale. The collaboration of experts who are already regulated, such as company secretaries, chartered accountants, cost accountants, lawyers and architects, engineers and doctors, etc., would therefore be a suitable use of this vehicle, particularly for accountants and auditors who are not legally permitted to conduct business. Additionally, as India draws FDI to LLP-based entrepreneurial projects, this would support small businesses. Ease on loans is also provided to LLP's making the red tapism and extensive formalities much easier as declared in *KL ENTERPRISES LLP vs BAJAJ FINANCE LTD* (6 July, 2020).⁷

There has long been a demand for a corporate structure that would offer low compliance costs while combining the adaptability of a partnership and the benefits of limited liability. The LLP format is an alternative corporate business structure that offers a company's limited liability protections while giving its members the freedom to structure their internal administration however they see fit, just like in a partnership firm. The LLP can continue its existence

⁶ Kaustubh Sinha & Utpal Kant, LLP in India [Legalserviceindia.com](https://www.legalserviceindia.com/article/1301-LLP-in-India.html) (2022), <https://www.legalserviceindia.com/article/1301-LLP-in-India.html> (last visited Aug 25, 2022).

⁷ *K L Enterprises Llp & Ors. vs Bajaj Finance Limited* on 6 July, 2020 <https://indiankanoon.org/doc/57537643/>, <https://indiankanoon.org/doc/57537643/> (last visited Sep 17, 2022)

irrespective of changes in the partners and is capable of entering into contracts and hold fixed assets in its own name. The case of MS DIAMOND NATION vs DEPUTY STATE TAX COMMISSIONER on June 26th 2019 differentiated between the extent of liability in a partnership firm and an LLP. Section 25-27 govern the aspect of liability under the act, thus proving that LLP is said to be a separate legal entity, liable to the full extent of its assets but liability of partners is limited to that of their agreement at the time of entering into business⁸. For small and medium-sized businesses in general and for businesses in the services sector in particular, this structure would be very helpful. LLPs are the preferred corporate structure internationally, especially for activities involving professionals or the service sector. While an LLP and a traditional partnership share some similarities, the individual members of an LLP are less responsible for any business-related debts. Compared to the Partnership business structure, there are more administrative tasks to be performed.⁹

III. HOW LLP HELPS BUSINESSES IN INDIA

- LLPs have the same tax treatment as partnership firms for income tax purposes. As a result, LLP is responsible for paying income taxes, while its partners' shares are not. Consequently, no dividend distribution tax is due. The income tax law's "deemed dividend" provision does not apply to LLPs.
- Due to cost savings in compliance, paperwork, decision-making, and taxes, the LLP structure naturally aids in cost reduction. Therefore, current organisations are considering switching from their corporate structure to an LLP structure.
- An LLP is simply required to submit an annual statement of accounts and annual return. While the Partners are free to choose their own compensation, the LLP must adhere to certain tax law restrictions when claiming a tax deduction for compensation. In the case of corporations, payments to family and compensation for directors require approvals and supporting documents.
- The cost of forming an LLP and the cost of compliances is low compared to the cost for a public or private limited company.
- In LLP, there is no minimal capital requirement. The least amount of money is required to establish an LLP. A partner's contribution may also include various advantages to the LLP in addition to tangible, movable, immovable, or intangible property.

⁸ M/S Diamond Nation vs Deputy State Tax Commissioner on 26 June, 2019 <https://indiankanoon.org/doc/57537643/>, <https://indiankanoon.org/doc/57537643/> (last visited Sep 17, 2022)

⁹ Supra no.4

- It is easy to start and manage a business. LLP agreements are customized in according to meet the needs of partners concerned. There are fewer formalities in areas of legal compilation, annual meeting, resolution as compared to any other Private Limited Company.
- An LLP may bring legal action on its own behalf and may also be sued. In the event of an LLP, partners are not accountable under any circumstances. The partners are shielded from the LLP's debts. According to the law, if a partner in an LLP commits fraud, the other partner(s) will not be held liable for his actions. If something goes wrong with an LLP and you decide to dissolve the company or partnership, you can do it quickly and easily.¹⁰

IV. CURRENT STANCE OF LLP IN INDIA

On July 30, 2021, the Limited Liability Partnership (Amendment) Bill, 2021, was introduced in the Rajya Sabha. The 2008 Limited Liability Partnership Act is being modified by this bill. Regulation of limited liability partnerships is provided under the Act (LLP). LLPs are a different type of business entity from conventional partnership firms. A partner's liabilities are constrained by their investment in the company under an LLP. The Bill modifies the type of penalty for some offences and turns them into civil defaults. Additionally, it provides for the creation of special courts, the definition of tiny LLPs, and the appointment of specific adjudicating officers. The new bill has several features:

- The Act specifies that, under certain circumstances, the central government may order an LLP to change its name (such as the name being undesirable or identical to a trademark pending registration). Failure to follow such a directive is punishable by a fine of between Rs 10,000 and Rs 5 lakh. Some of these grounds are eliminated by the Bill, which also gives the central government the authority to grant such an LLP a new name rather than imposing a punishment.
- The 2022 amendments to the LLP Act have removed the offence of non-compliance with an order of the National Company Law Appellate Tribunal (NCLAT).
- The amendment to the LLP Act has reduced the monetary penalty for several compoundable offences. Accordingly, minor, technical, or compliance related offences have been moved to the 'In-house Adjudication Mechanism' framework with modified

¹⁰ Garima Sahi, 10 Reasons why startup should choose Limited Liability Partnership (LLP) to start their business in India Hubco.in (2017), <https://www.hubco.in/articles/10-reasons-why-startup-should-choose-limited-liability-partnership-llp-to-start-their-business-in-india> (last visited Aug 25, 2022).

penal provisions.

- The Bill provides for formation of a small LLP where: (i) the contribution from partners is up to Rs 25 lakh, (ii) turnover for the preceding financial year is up to Rs 40 lakh. The central government may also notify certain LLPs as start-up LLPs.

V. RECOMMENDATIONS

- It is necessary to solve the issue of LLPs being taxed twice. Consideration should be given to the US framework for LLP taxes that is already being used. In the US, the LLP or its partners may or may not be subject to taxation at the discretion of the partners. The issue of double taxation in India would be resolved as a result.
- Clarity must be added on LLPs' rights to practise law in courts, and the position of LLPs must be addressed.
- The LLP Act needs to include a clause that permits the transformation of an LLP into a conventional partnership.
- In instances of LLP non-compliance with legislative requirements, the rate of punishment must be decreased.

VI. CONCLUSION

The establishment of LLPs in India is a positive start to a lengthy journey. The hybrid structure of LLP will make it easier for business owners, service providers, and professionals to organise themselves and run their businesses in a creative and effective way so they can successfully compete on the global market. 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 further boost India's economic progress. To enable professional expertise and entrepreneurial initiative to combine, organise, and operate in a flexible, innovative, and efficient manner, it has been felt that a new corporate form is necessary. This form would provide an alternative to the traditional partnership, with unlimited personal liability on the one hand, and the statute-based governance structure of the limited liability company on the other. Additionally, since FDI is being attracted to India through LLP-based entrepreneurial projects, this will inspire Indian small business owners to consider enterprises that will involve foreign capital. Also, using the LLP structure is something that foreign companies with project offices in India contemplate doing to lower risk. The regulation of the LLP corporate structure has actually been beneficial for Indian economic interests, even though some more fine-tuning of

the LLP structure is necessary to mitigate some contradictory situations.

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