

## **Future of LLP**

### **INTRODUCTION:**

With the world going global, there was a need for a new concept that can blend the features of Partnership Firm and Companies i.e. the one which can provide the limited personal liability as well as the statute based structure and distinct identity, hence, the concept of Limited Liability Partnership. The initial seeds of LLP were sown in India in 2006 but the Act never materialized. Finally, in 2008 the efforts paid when the draft bill produced before both the houses of parliament got approved and the world wide recognized form of business organization was introduced in India by way of Limited Liability Partnership Act, 2008.

Before having a glance at the future of LLP, let's have an insight as to what is LLP.

### **WHAT IS LLP?**

A Limited Liability Partnership, popularly known as LLP is a good blend of partnership and company form of organization.

LLP's have many advantages over partnerships and limited companies. LLP is a special vehicle that allows their member to enjoy the benefits of limited liability, giving them the freedom and flexibility to set internal structure based on their mutually arrived agreements. At the same time it enjoys the perpetual succession unlike traditional partnership firm.

LLP is 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.

Now let's take a look at some of the advantages and disadvantages of LLP.

### **ADVANTAGES:**

1. Easy to incorporate and Low cost of Formation as compared to companies
2. Separate Legal Entity
3. Limited Liability i.e. No risk of Attachment of Personal Assets
4. Perpetual Succession

5. Less governed as compared to companies
6. Less compliance level and easy to dissolve as compared to companies
7. No prescribed minimum capital as well as maximum number of partners
8. Taxation benefits (Dividend Distribution Tax not applicable)

**DISADVANTAGES:**

1. Cannot raise money from public
2. Conversion Difficulties i.e. there is dead end after converting a firm or Company into LLP. There is no room for either converting a LLP into a company or a firm.
3. Heavy Penalties are prescribed for non-compliance.
4. LLP's have not yet received permission from RBI to do business in financial sector.

An attempt is made hereby to express views on future of LLP considering various aspects.

**FUTURE OF LLP:**

The word to word reproduction of the Statement of Object and Reasons of the LLP Bill which was placed in parliament is as follows:

“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, a need has been felt for a new corporate form that 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, in order to enable professional expertise and entrepreneurial initiative to combine, organize and operate in flexible, innovative and efficient manner.”

LLP is beneficial to small and medium entrepreneurs and also to professionals. To be a successful vehicle that can provide proper growth to Indian Economy, it has to be coordinated with other acts and other authorities. Though Central Government has made extensive efforts to do so (e.g. certain amendments are made in Income Tax Act, 1961) but still there are many clarifications yet to be made, giving rise to perplexity and different interpretations. There are efforts made by the Ministry of Finance which will

help LLP to grow. For eg: No need for separate DPIN. There is transparency i.e. the annual accounts can now be viewed online. The growth of LLP in India is quite remarkable.

| No. of LLP's registered as<br>on 31.03.2010 | No. of LLP's registered as<br>on 31.03.2011 | No. of LLP's registered as<br>on 11.11.2011 |
|---|---|---|
| 1,054                                       | 4,317                                       | 6,847                                       |

### **LLP vis-à-vis Various Acts/Authorities**

#### **INCOME TAX ACT, 1961:**

Income Tax Act, 1961 has been recently amended by CBDT incorporating several clauses for LLP. As per the IT Act, it has included LLP in the definition of firm instead of giving it a separate identity. So, all the conditions which are applicable to a firm are applicable to LLP. But as per LLP Act it is a corporate entity. Because of this there are difficulties faced by it. The tax will be payable by the LLP at 30% plus Education Cess. No surcharge will be payable by the LLP from A.Y. 2010-11.

No Minimum Alternate Tax (MAT) will be payable by a company converted into LLP. In order to save revenue on account of companies converting to LLP's to take benefits of tax exemption; this Union Budget has proposed to introduce a new Chapter XII-BA under the Income Tax Act 1961 which provides for levy of Alternate Minimum Tax @ 18.5% on the adjusted total income of Limited Liability Partnerships thus curbing this benefit. The effective rate of AMT after taking in account education cess will be 19.05%. No dividend distribution tax will be payable by such a company after conversion into LLP.

#### **CONVERSION OF FIRM/ PRIVATE COMPANY INTO LLP:**

Conversion of partnership firm to LLP will not have any tax implications if the rights and obligations of the partners remains the same and there is no transfer of any asset or liability after conversion.

The LLP Act makes provision for conversion of private company or unlisted public company into LLP. There are many benefits of getting converted into LLP. For eg: All the assets and liabilities of the Company immediately before the conversion become the

assets and liabilities of the LLP.

- **Taxation**

No Capital Gains tax shall be charged on transfer of property from Company to LLP subject to fulfilling of all the conditions laid down in Sec 47 (xiiib). Carry forward and Set off Losses and Unabsorbed Depreciation. Also, the government is relaxing the conversion norms.

Recently government has relaxed many of the conversion norms such as conversion of entities having secured loans etc. This has lured many of the traditional partnership firm and companies for conversion, indicating steps towards brighter future.

However, the condition laid down by the Act of turnover restricts the companies to convert them into LLP. This gives a picture that the government does not want all the companies to convert them into LLP, thus, restricting the scope to LLP to grow.

- **Stamp Duty :**

Stamp Duty is the subject reserved for the States and applicability of the same will depend upon relevant act specified by State. Till date no clarification has been given either by the Stamp Duty Act or LLP Act. At present, in opinion of masses, it is assumed that stamp duty would not be applicable, so as to develop business that can be favored globally providing flexibility.

### **FOREIGN DIRECT INVESTMENT (FDI):**

The government of India has approved the much awaited policy on FDI in LLP. FDI will be allowed, through the Government approval route, only in LLP's operating in sectors/activities where 100% FDI is allowed, through the automatic route and there are no FDI-linked performance conditions (such as 'Non Banking Finance Companies' or 'Development of Townships, Housing, Built-up infrastructure and Construction-development projects' etc.). LLP's with FDI will not be allowed to operate in agricultural/plantation activity, print media or real estate business. An Indian company, having FDI, will be permitted to make downstream investment in an LLP only if both-the company, as well as the LLP- are operating in sectors where 100% FDI is allowed, through the automatic route and there are no FDI-linked performance

conditions. LLP's with FDI will not be eligible to make any downstream investments. Foreign Capital participation in Investment in LLP's by Foreign Institutional Investors (FIIs) and Foreign Venture Capital Investors (FVCIs) will not be permitted. LLP's will also not be permitted to avail External Commercial Borrowings (ECBs).

#### **OTHER ACTS/ AUTHORITIES:**

LLP has been recently introduced and have not been recognized by authorities like Reserve Bank of India, SEBI, IRDA etc and therefore all those activities, which are governed by these authorities cannot be carried by LLP for the time being now. There is some relaxation in the norms by RBI, SEBI. For eg: Stock broking can be carried out by LLP's, FDI in some areas is now allowed for LLP's. But there are areas where LLP is not operational. For eg: LLP is not allowed to do borrowing/lending business.

#### **CONCLUSION:**

After having great success in other foreign countries, the LLP could be the main entity in the future of Corporate India. However its success depends on the recognition and the support of the various allied regulations prevailing in India.

Considering the various hurdles on account of the inadequate support from allied laws prevailing in India in the present scenario, should the corporate India really adopt LLP over the other trident entities? "As action speaks louder than words", future of LLP clearly depends upon the proper execution of words by Government.

#### **Disclaimer :**

The information contained in this write up is to provide a general guidance to the intended user. The information should not be used as a substitute for specific consultations. We recommend that professional advice is sought before taking any action on specific issues.