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LIMITED LIABILITY PARTNRSHIP IN INDIA AND ENGLAND: A COMPARATIVE STUDY

ABSTRACT

Special kind of general partnership in which each partner's liability for the partnership's debts is restricted to a certain extent. Will the partners be responsible for the negligent injuries or property damage caused by other partners? Will the partners be held liable for the contractual obligations of other partners? These types of partnership are known as limited liability partnership and it is covered under limited liability partnership act, 2008. The paper tries to understand the distinct features of LLP in India as well as UK in a comparative manner. Along with highlighting the features of the Limited liability partnership act for better understanding of its advantages and disadvantages. Stating its relevance as both a hybrid of a corporation and a partnership in today's world. The particular act is covered under the 'Companies act, 2013'. The methodology used for gathering information is based on secondary data where various scholarly researches have been studied.

INTRODUCTION

A limited liability partnership, also known as an LLP[i], is a special kind of general partnership in which each partner's personal liability for the partnership's debts is restricted to a certain extent. Partners will not be responsible for the negligent injuries or property damage caused by other partners; however, depending on the state, partners may be held liable for the contractual obligations of other partners. LLPs are common for larger partnerships and are especially common among professionals; in fact, some states restrict the use of the LLP structure to only those professionals. An LLP, like a general partnership, needs to have at least two partners, but unlike a general partnership, an LLP has more leeway[ii] in how it structures the amount of control and proceeds that each partner keeps for themselves. In a limited liability partnership (LLP), nearly all decisions can be delegated to certain partners, with the exception of those involving changes to the partnership agreement[iii], which need the approval of all partners. Unlike limited partnerships, limited liability partnerships (LLPs) permit limited liability for partners even if they continue to participate in the management of the business. However, if a court finds that the partners attempted to undermine creditors in some way, such as by improper distributions, the court may pierce the veil of limited liability in order to claw back-funds[iv] for the creditors[v]. However, the actions that would trigger such treatment require a case-by-case analysis in conjunction with the applicable state laws. Compare and contrast with limited partnership and limited liability company (LLC).

The unlimited liability of partners in typical partnership firms extends to the firm's collective debts and the legal consequences of those debts. This indicates that their personal assets may be subject to seizure in order to satisfy the debts and liabilities incurred by the company. As a solution to this issue, limited liability partnerships (LLP) are available.

A limited liability[vi] partnership (LLP) possesses all of the fundamental characteristics of a traditional partnership firm, with the exception of the same legal entity status and the unlimited liability of partners. As a direct consequence of this, limited liability partnerships have a separate identity and existence in the eyes of the law from that of their partners. Additionally, the partners in the company have limited liability.

DEFINITION

In 2008, the businesses in India that are structured as LLPs were given a legal framework when the Indian Parliament passed the Limited Liability Partnership Act. A limited liability partnership (LLP) is defined as a partnership that is registered under the Act, as stated in Section 2 of this law. In addition, a limited liability partnership (LLP) agreement is a written contract that is made either between the partners of an LLP or between the LLP and its partners. The partners' rights, responsibilities, duties, and powers are all laid out in detail in this agreement.

The provisions of the Indian Partnership Act, 1932 do not apply to limited liability partnerships (LLPs) because the Limited Liability Partnership Act, 2008 governs limited liability partnerships in India in a manner that is specific to their structure. They are exclusive to the conventional partnership[vii] business structure.

ORIGIN OF LLP

In the early 1990s in the United States, in response to the sudden drop in real estate and early prices in Texas in the 1980s and the subsequent effect that it had on banks and other financial institutions, the idea of a Limited Liability Partnership emerged. This was done in an effort to protect banks and other financial institutions. Because of this collapse, a large number of banks and savings and loan associations went bankrupt[viii]. Because the amounts that could be recovered from the banks were relatively low, efforts were made to recover assets from the attorneys and accountants who had advised the banks in the early 1980s. This was done for a variety of reasons. The reason for this was that partners in law and accounting firms were vulnerable to the possibility of enormous claims that would personally bankrupt them. As a result, the first LLP laws were enacted to protect innocent members of these partnerships from being held liable for the actions of other partners. On August 26, 1991, the state of Texas became the first state in the world to pass a law governing LLPs. This precedent was subsequently followed by other nations around the world. One of the many nations that have acknowledged the legitimacy of LLPs is India. Other nations that have done so include Canada, Germany, Japan, China, Greece, Singapore, and others.

DISTINCT FEATURES OF LLP

The following peculiar characteristics are present in a limited liability partnership:

1. **Separate legal entity**

Limited liability partnerships, on the other hand, are regarded as distinct legal entities, in contrast to regular partnership firms. This indicates that LLPs have the ability to own assets and take on liabilities in their own names. They are also able to enter into contracts, bring legal actions, and defend themselves against legal actions in their own names.

2. **The limited legal responsibility of partners**

Partners in a limited liability partnership (LLP) enjoy separate and limited liability for their actions. Their personal assets[ix] will not be subject to attachment in the event that the LLP goes out of business or experiences certain legal repercussions as a result of the repayment of debt.

The liabilities of partners, on the other hand, have the potential to become limitless in the event of wrongful and illegal acts such as fraud, the commission of another offence, or any other such act.

3. **The distribution of profits**

Every member of a limited liability partnership is entitled to a share of the company's profits in the same way that regular firm partners are. However, they have complete discretion over the manner in which they will divide the profits.

4. **Partners in Limited Liability Partnerships**

Partners in a limited liability partnership may be natural persons, also known as natural persons or individuals, or even body corporates. In addition, a person is not eligible to be a partner if they suffer from unsoundness of mind or if they are unable to pay their debts.

At all times, a limited liability partnership (LLP) must have at least two partners. In addition, there is no limit placed on the number of partners, whereas in regular partnership firms that number is capped at 50. If the number of partners in an LLP drops to less than two at any point in time and the lone remaining partner continues to run the business under these conditions for longer than six months, the sole remaining partner's liability to the firm's business will increase to an unlimited amount.

Limited Liability Partnership Act, 2008

In 2008, the Indian Parliament passed a law called the Limited Liability Partnership Act, with the intention of introducing and formally endorsing the concept of LLP throughout the country. In India, general partnerships are not the same as limited liability partnerships (LLP), which are bodies corporate and legal entities separate from their partners. LLPs have perpetual succession, and the addition or removal of partners in an LLP does not affect the LLP's rights or liabilities in any way.

The Indian Partnership Act of 1932 does not apply, as stated in Section 4[x] of the Act.

The provisions of the Indian Partnership Act[xi], 1932 (9 of 1932), shall not apply to a limited liability partnership, unless expressly provided otherwise elsewhere in the act.

Advantages Of LLP

Separate legal entity

Like companies, a limited liability partnership (LLP) functions as its own independent legal entity. The LLP is separate from its partners in every way. A LLP has the ability to bring and defend legal actions in its own name. Customers and vendors are provided with a sense of confidence in the company thanks to the fact that the contracts are signed in the name of the LLP. This helps to gain the trust of the various stakeholders involved in the business.

Limited legal responsibility on the part of the partners

The LLP provides its partners with limited liability protection. The partners' individual contributions serve as a limit on the extent of their legal responsibility for the business. This indicates that they are only responsible for paying back the amount of contributions that they themselves have made, and they do not bear any personal liability for any losses sustained by the company. When a limited liability partnership (LLP) is being wound up, the only assets that are responsible for paying off the debts of the LLP are those assets. Since the partners do not have any personal liabilities, they are free to conduct themselves as credible businessmen and can act as they please.

Low costs and a reduced amount of compliance

When compared to the cost of incorporating a public or private limited company, the cost of forming a limited liability partnership (LLP) is relatively inexpensive. The LLP also has a low number of compliances that need to be followed. The limited liability partnership (LLP) is only required to submit two statements on an annual basis, namely an Annual Return and a Statement of Accounts and Solvency[xii].

There is no mandated minimum amount for the capital contribution.

There is no required minimum amount of capital to start up the LLP. Before proceeding with incorporation, having a minimum amount of paid-up capital is not necessary and is not a requirement. It is possible for it to be established with the partners contributing any amount of capital.

Disadvantages Of LLP

The cost of disobeying the rules

The compliance that is expected to be followed by LLP is relatively light. However, if these compliances are not completed by the specified deadline, then the LLP will be subject to a significant financial penalty. Even if the limited liability partnership (LLP) does not engage in any business during the year, it is still required to submit annual returns to the Ministry of Corporate Affairs (MCA). The limited liability partnership (LLP) will be subject to a significant fine if it is found to have failed to submit the required returns.

Proceeding with the winding up and dissolution of the LLP

To establish a limited liability partnership (LLP), there must be at least two partners. The limited liability partnership (LLP) will be dissolved after a period of six months in which the required minimum number of partners of two has not been met. In the event that the LLP is unable to pay its obligations, the company might be dissolved.

Challenges encountered in obtaining funding

In contrast to a corporation, a limited liability partnership (LLP) does not use the terms "equity" or "shareholders." Angel investors and venture capitalists are not allowed to become shareholders in the limited liability partnership (LLP). This is due to the fact that the shareholders have to be partners in the LLP as well as assume all of the responsibilities that come along with being a partner. Therefore, angel investors and venture capitalists[xiii] would rather put their money into a company than into an LLP, which makes it difficult for LLPs to raise capital.

Limited Liability Partnership (LLP) Registration in India

Due to the fact that it combines the positive aspects of partnership firms and companies into a single entity, the Limited Liability Partnership (LLP) has emerged as one of the most popular forms of business organisation among entrepreneurs[xiv].

In 2008, India became one of the first countries in the world to adopt the concept of the Limited Liability Partnership (LLP). A limited liability partnership (LLP) combines the benefits of a partnership firm and a corporation. In India, the LLP is governed by the Limited liability Partnership Act, which was passed in 2008. When forming a limited liability partnership (LLP), you need at least two partners. On the other hand, there is no upper limit on the maximum number of partners that can be included in an LLP.

A minimum of two individuals must be designated as partners out of the total number of partners, and at least one of these individuals must have a permanent address in India. The designated partners' rights and responsibilities are outlined in the LLP agreement, which can be found here. They bear direct responsibility for ensuring that the LLP Act of 2008 and any other provisions outlined in the LLP agreement are followed to the letter.

FEATURES OF LLP

- Similar to companies, it possesses its own distinct legal entity.
- The amount of each partner's potential liability is capped at the amount of the partner's individual contribution.
- The formation of an LLP has a relatively low cost.
- Reduced obligations to comply with regulations.
- No requirement of minimum capital contribution.

To establish a limited liability partnership (LLP), there must be a minimum of two partners. The maximum number of partners in an LLP is unrestricted and can reach any number desired. There should be a minimum of two designated partners who are individuals among the partners, and at least one of them should be residing in India. One of the designated partners should also be a citizen of India.

The LLP agreement specifies the rights and responsibilities that are incumbent upon designated partners. They have direct responsibility for ensuring that all of the provisions of the LLP Act of 2008 as well as the provisions outlined in the LLP agreement are followed.

You are required to register your Limited Liability Partnership with the state in accordance with the Limited Liability Partnership Act of 2008 if you intend to launch your company as a Limited Liability Partnership.

UK Limited Liability Partnerships (LLP)

A limited liability partnership, also known as an LLP, is a type of legal entity that combines the organisational flexibility and tax status of a partnership with the provision of limited liability protection for the members of the partnership. This limited liability is made possible by the fact that an LLP possesses its own distinct "personality" in the eyes of the law, which is distinct from that of its members. In most cases, the amount of a partner's liability is equal to the amount that was agreed upon as that partner's contribution to the partnership.

LLPs are considered to be "tax transparent," which indicates that rather than taxing the partnership as a whole, each member of the LLP is taxed on their proportionate share of the LLP's profits or gains. Any profits or gains derived from sources outside the UK that are made by an LLP will not be subject to tax in the UK, unless any of the LLP's members are individuals or companies residing in the UK. There are some exceptions to the general rule that limited liability partnerships (LLPs) are tax transparent; however, these exceptions do not apply when the LLP is engaged in the business of trading.

There are no limitations placed on the members of an LLP with regard to the tax residence or nationality that they maintain. Therefore, if the members of an LLP do not reside in the

United Kingdom and the business generates income from sources outside of the UK, the LLP itself will not be subject to taxation in the United Kingdom.

A limited liability partnership (LLP) in the United Kingdom will be deemed resident in the jurisdiction from which it is controlled, which is typically the jurisdiction in which its members are situated for the purposes of determining its residence status. A limited liability partnership (LLP) is required to submit an annual partnership tax return regardless of whether or not the partners are subject to taxation.

Because of the tax transparent status of LLPs, it is important to note that limited liability partnerships (LLPs) that have members located in other countries are generally unable to take advantage of the tax treaty network in the UK.

FEATURES

Since its inception as part of the Limited Liability Partnerships Act (2000) in the United Kingdom, the Limited Liability Partnership has become increasingly popular not only as a tax-saving vehicle for non-UK businesses engaged in international trade but also among professional firms.

LLPs, which stand for limited liability partnerships, combine the benefits of corporate status (i.e. having a legal personality separate from its members) with the protection of limited liability for members of the partnership. Limited Liability Partnerships (LLPs) In addition, rather than the partnership itself being subject to taxation on taxable profits, the members (or partners) of the partnership are the ones who are responsible for paying taxes on those profits.

Formation and Composition of the Group

The formation of a Limited Liability Partnership (LLP) in the United Kingdom requires registration at the UK's Companies House. LLPs can be created by two or more people, including corporate entities, for the purpose of operating a legal business with the intention of making a profit.

At all times, there must be a minimum of two designated members who are responsible for the management of the LLP; however, there are no restrictions on the nationality or residence of these designated members.

The Partnership Agreement can be found here.

According to the Act, a limited liability partnership (LLP) does not need to have a written partnership agreement in place. On the other hand, it is strongly encouraged that the parties sign a written agreement to govern their relationship.

It is customary to anticipate that a partnership agreement will include specifics regarding the kind of business being conducted, the members' shares and contributions, the arrangements for profit and loss sharing, the management formalities, and the responsibilities of each individual member.

Separate Legal Status

The UK LLP operates under its own distinct set of legal guidelines. In the eyes of the UK's company law, an LLP is the same thing as a "body corporate."

The phrase "limited liability"

Members of an LLP have a liability that is limited to the amount that they contributed to the total assets of the LLP.

Tax Disclosing Openness

Despite their distinct legal status, UK LLPs are transparent structures for the purposes of UK taxation, which is one of the most notable characteristics of these organisations. The LLP itself is not responsible for paying any taxes; rather, the tax authorities in the UK will look to each of the partners in order to determine who is liable for UK tax.

If the members of the LLP do not reside in the United Kingdom and the income earned by the LLP comes from sources outside of the United Kingdom, then the LLP and its members will not be required to pay taxes in the United Kingdom.

CONCLUSION

Despite the fact that India did not embrace the limited liability partnership (LLP) concept until a very late stage, LLPs have finally found a place in India. The limited liability partnership (LLP), which is a hybrid of a corporation and a partnership, is advantageous to small and medium-sized businesses. The idea of a limited liability partnership (LLP) is one that is supported by the government. This is due to the fact that LLPs offer numerous tax advantages and permit business owners to concentrate on the activities that are most important to their companies. The type of organisation in question is one that requires little effort to keep running while at the same time offering the owners limited liability protection. The limited liability partnership (LLP) is one of the most straightforward business structures, as it requires little effort to establish and run. As a result of the nature of the LLP, it has recently gained a lot of popularity, and as a result, many different companies and businesses are currently converting into LLPs whereas LLPs in the UK combine the advantages of corporate status and unlimited capacity with the protection of limited liability for members as well as the ability to operate and be taxed as a partnership. LLPs in the US combine the advantages of a corporation and a limited liability company.

In situations where it is necessary, a limited liability partnership (LLP) can enter into contracts and hold assets in its own name, just like a limited liability company would be able to do.

As a result, the limited liability partnership (LLP) offered by the United Kingdom is an extremely flexible vehicle for international trade that, if correctly structured, will not be subject to taxation in the United Kingdom.

[i] Limited Liability Partnership.
[ii] The amount of freedom to move or act that is available.
[iii] An Agreement is a promise between two entities creating mutual obligations by law. Section 2(e) of the Indian Contract Act, 1872 defines an agreement as 'Every promise and every set of promises, forming the consideration for each other, is an agreement'.
[iv] A clawback is a contractual provision whereby money already paid to an employee must be returned to an employer or benefactor, sometimes with a penalty. Many companies use clawback policies in employee contracts for incentive-based pay like bonuses. They are most often used in the financial industry.
[v] a person or company from whom you have borrowed money.
[vi] the state of being responsible for something.
[vii] Conventional partnership means a partnership registered under the Registration of Businesses Act 1956 [Act 197] and a partnership established by two or more persons for the purposes of carrying on any professional practice.
[viii] Bankruptcy is a legal process through which people or other entities who cannot repay debts to creditors may seek relief from some or all of their debts. In most jurisdictions, bankruptcy is imposed by a court order, often initiated by the debtor.
[ix] An asset is a resource with economic value that an individual, corporation, or country owns or controls with the expectation that it will provide a future benefit.
[x] "Partnership" is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all.
[xi]The Indian Partnership Act 1932 defines a partnership as a relation between two or more persons who agree to share the profits of a business run by them all or by one or more persons acting for them all.
[xii] the state of not owing money to anyone or of having the ability to pay your debts.
[xiii] Capitalism is based on individual initiative and favors market mechanisms over government intervention.
[xiv] a person who makes money by starting or running businesses, especially when this involves taking financial risks.