



## LLP: A hybrid composition of company and partnership firm

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### Abstract

Business organizations and entrepreneurs all over the world have a great demand and urge for running their business activities in a systematic, flexible and adaptable approach. Majority of the entrepreneurs and enterprises who carry their business activities in a stringent procedure and traditional approach are now trying to change the pattern and conduct the business in to a new structured form named as LLP. It has been seen since the last few years that small and middle class business persons and firms are converting their business in to LLP in order to derive a smooth functioning of the business with lesser risk, limited liability and lesser compliance of rules and regulation. The current paper put emphasis on the comparative analysis of partnership firm and Limited Liability partnership in regard to the formation, structure, functions, liabilities and so on. The author has also focused on the comparative analysis of the winding up process of the two separate entities.

**Keywords:** organizations, partnership, winding, separate

### Introduction

In order to overcome the loopholes and latches of the Partnership Act, 1932 a new concept of LLP i.e Limited Liability Partnership emerged in to existence by virtue of the Limited Liability Partnership Act, 2008. However the need was felt by the demanding entrepreneurs, professionals and other business organizations to have this means of LLP structure which will derive the benefits of a corporate organization with expensive, flexible, adaptable and acceptable to different stake holders. The structure of Limited Liability Partnership can be utilized by any lawful business organization carried on by two or more persons with a view to enjoy the profits. It has been recognized all over the commercial sectors that the structure of LLP was one of the most preferred business pattern for both large and small scale enterprises. The concept of LLP has developed a wider significance in most of the developed countries which has been globally acknowledged during the last years.

### Meaning and Features

By virtue of Section 3 of the Limited Liability Partnership Act, 2008 “ A Limited Liability Partnership is a body corporate formed and incorporated under this act and is a legal entity separate from that of the partners.

Section 3 of the LLP Act, 2008 focuses on the distinctive features of the Limited Liability Partnership structure. If we strictly adhere to the true interpretation of the meaning of section 3, we can easily get a crystal clear reflection that LLP has some similar features as like that of any company registered under the Companies Act, 2013. A true analysis of the meaning of section 3 can be broadly understood under the following heads.

- LLP a means of body corporate- The Limited Liability Partnership is a body corporate which is formed and incorporated under the LLP Act, 2008.
- LLP is a separate legal entity- The LLP under the LLP Act, 2008 is a legal entity which is totally separate from the partners. Thus being a separate legal entity and having a separate legal existence, a LLP is eligible to

enter in to contract and also it can hold, acquire or dispose property. Besides a Limited Liability Partnership structure can also sue or be sued in its own name.

- LLP enjoys a perpetual succession- The structure of LLP also enjoys a perpetual succession. From the perspective of its longevity, a LLP is formed and it takes its birth by virtue of its incorporation and it continues to remain as it is irrespective of change in the partners. In other words LLP shall continue to have its existence unless it is dissolved or winded up in accordance with the law.
- LLP is not affected on account of change in partners- There is no adverse impact on LLP on account of change in the partners. Change in the constitution of LLP shall not affect the existence, rights or liabilities of the LLP. However in case of the previous partnership formed under the Partnership Act, 1932 change in the constitution of partners may sometimes amount to dissolution of partners.

### LLP- A hybrid composition of Company and Partnership Firm

The Limited Liability Partnership structure is basically a hybrid composition of companies and partnership firms. The LLP structure however invokes the distinctive features of a company and partnership firm which makes the structure of organization less stringent in procedures and more flexible in activities. The legislation was enacted basically with the objectives to remove the disadvantages of both company and partnership that still exist in the recent trends. The Government of India felt and considered that LLP structure might prove to give enormous advantages to the business organizations and it will be open to all traditional partnership firms, private companies or proprietorship firm to convert themselves in to LLP, which will not only benefit the business organizations but also may give freedom to manage their business in accordance to a flexible procedure. However in accordance to this mindset, the traditional

approach of partnership firm who desires to convert their business pattern in to LLP structure can easily do it and derive certain benefits. Firstly Partnership Firms running business having the account statements and profit figures would be included within the purview of public domain. Secondly, partnership firms would be subjected to greater financial discipline. Thirdly, another beneficial advantage of LLP is similar to general partnership firm i.e from the perspective of taxation both the entities enjoy equal respect. Moreover incorporation of LLP under the Limited Liability Partnership Act, 2008 is mandatory to be recognized under the ministry of corporate affairs. Once LLP is registered and incorporated under the LLP Act, 2008, it requires the appointment of designated partners which shall be minimum two in number and who shall conduct the affairs of the LLP.

### **Comparative Analysis of LLP and Partnership Firm**

The major differences between LLP and the Partnership Firm lies on the footing of liability. LLP is a dynamic concept which has drawn the spirit of both company and partnership firm and thus in LLP the liability of the partners are limited as per their contribution while in case of partnership firm the liability of the partners are unlimited. Moreover the LLP structure would proved to be more worth and would enable the entrepreneurs, professionals and enterprises for providing services of any disciplines education, technical, scientific etc. However due to its flexible character in its structure and and formation, the LLP would me more suitable vehicle for small enterprises and for investment by venture capital while in partnership firm though the rules being flexible in nature the structure and formation is not so wider as like a LLP which would enable the enterprises to gain with the lesser risk. Another additional advantage the structure of LLP will enjoy a separate legal existence i.e to say LLP is totally separate from its partners and in consonance of such feature it further derives the right of perpetual succession, which enables the LLP structure to enter in to contract or sue. It is better to say that the structure of LLP has derived certain similar nomenclature as like that of a company on the other hand ordinary partnership firm are registered under the partnership act, 1932 are derived of such enjoyments as not having a independent separate legal existence but it is also pertinent to mention that LLP and ordinary partnership firm have same respect in the eyes of Income Tax Act, 1961. The system of direct taxes strictly does not differentiates the two facets of organization on the basis of separate legal existence and as such the Income Tax Act, 1961 strictly put emphasis by alienating partners from partnership firm and as such return of income is to be furnished separately by the partnership firm as that of the partners of the firm.

In a partnership firm a risk factor always exists in the involving partners i.e incoming and outgoing which is always a predominant factor and that may frequently dissolve the existing relationship of partners partnership business. However the extent of dynamic feature in partnership firm imposes a serious adverse effect on the entire ambience of the business structure while as compared to the structure of LLP no such frequent changes exist and thus it leads to smooth functioning of business activities. Moreover, another ambiguity which has been traced in the case of partnership lies on the concept of "mutual agency" and to such an extent that liability goes in hand with the partners of the firm. A retired partner of a partnership firm

is not free from encumbrances and clutches of the third party for the acts of the firm until and unless he renders a public notice of his retirement to that effect. In case if the firm activities are carried in a contravening way against the interest of the third parties a retiring partner may also be invoked still to face the liabilities as like that of the partners who are in existence of the reconstituted firm, hence partners have a unlimited liability even if they get alienate from partnership firm.

Another scheme of comparison can be drawn from the point of view of winding-up of business. In case of a partnership firm, dissolution of firm is the process to terminate and wind-up the business activities, this means the ultimate breakdown of the structure of relationship of all the partners comprising the partnership firm. The dissolution of the firm can occur in two ways-

- i. Without the intervention of the court-
  - Dissolution by agreement
  - If there is an expressed contract to that effect
  - Dissolution by notice
  - Compulsory dissolution on account of insolvency or unlawful means of business.
- ii. With the intervention of the court on the following grounds-
  - Insanity
  - Disability
  - Guilty of misconduct
  - Transfer of interest to third party
  - loss
  - just and equitable ground

However in comparison to the structure of LLP, the mode of this business structure gets dissolved by systematic devising method of winding-up which may be done voluntarily or by the tribunal with the appointment of Official Liquidator for the realization of assets and paying the liabilities. In this respect the winding-up process of LLP has the same nomenclature as like that of a company registered under the Companies Act, 2013. However in addition to it's the LLP(Winding and Dissolution) Rule, 2012 states the prescribed rules as to passing a resolution for winding up the LLP with the approval of at least three-fourth of the total number of it partners. However this rules is also providing electronic filing of documents, its states that every form or application or document is mandatorily required to be filed or delivered under the act and as such all pertinent information can be available through the portal maintained by the Ministry or Corporate affairs (MCA) whereas in comparison to a partnership firm whether registered or non-registered under the Partnership Act, 1932, all such mandates of filing, delivering and information are not required and as such authentic information of a partnership firm are not able to be obtained easily.

### **Conclusion**

It has been recorded during the last few years that with the growth of the Indian Economy, the role played by the entrepreneurs as well as technical and professionals has been globally acknowledged. However in this background a need has been felt for a new corporate structure that would provide an alternative to the traditional method of

partnership. The LLP structure was very fruitful in this regard because of the double benefits derived from a hybrid composition of partnership firm and corporation. So, taking in to account the Government of India felt to make such introduction so that it would globally benefit all those entrepreneurs and professionals who want to carry their business to a higher extent with lesser risk.

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