A STUDY OF LLP AND ITS IMPACT ON SMALL BUSINESS

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ABSTRACT

This article's goal is to provide the reader with a comprehensive overview of limited liability partnerships. Additionally, the study gives readers a thorough grasp of limited liability partnerships in relation to small businesses. The LLP act 2008 may be understood in a clearer and more succinct way by using the information from this study. The benefits that an LLP provides over a traditional partnership are further outlined in this paper. Additionally, a comprehensive comparison of the LLP acts in the UK and India has been presented. Regarding the same, recommendations have been given. These are elements that are considered during the conversation.

Keywords: Limited Liability Partnership, Small Business.

1. Introduction

Under the Limited Liability Partnership Act of 2008, a limited liability partnership (LLP) is a legal entity created and established. It is a distinct legal entity from its partner. An LLP is responsible for all of its assets, but the partners' responsibility is only as much as their agreed upon investment in the LLP. Both a corporation structure and a partnership firm structure are present in the LLP since the partners' liability is limited to the amount of their agreed-upon contribution. Except in the event of fraud, a partner is not personally liable. Additionally, since there is no shared responsibility in the case of an LLP, no partner is accountable or liable for the wrongdoing or carelessness of another partner.[1]

2. Research questions

- What is the impact of LLP on small businesses?
- What are the benefits of an LLP compared to a typical partnership with respect to a small business?
- What is the difference between the LLP of India and the UK?

4. Research Objectives

- To layout the advantages of a limited liability partnership over a typical partnership with respect to small businesses.
- To study the impact of LLP on small businesses.
- To analyse the difference between the LLP of India and the UK.

5. Limitation of the study

Because this study uses secondary data, there may be discrepancies in the findings. Future studies should also employ primary data for research purposes. Because of limited data availability, future researchers should reconstruct this research in a new way. The data might be skewed, and it's difficult to verify if the information gathered is correct. Information may be

[1] Mca.gov.in. 2022. LLP Act, 2008 - PDF. [online] Available at: <https://www.mca.gov.in/content/mca/global/en/acts-rules/llp-act-2008.html>.

out of current and hence erroneous. Because the sample size of secondary sources is restricted, the research may be untrustworthy.

6. Review of Literature

1. **Meena, R. and Nainawat, R., 2013. LLP in India: As Advantageous Business Model.** ***Global Journal of Management and Business Studies*****,** This article discusses the background, characteristics, meaning, and benefits of a limited liability partnership (LLP). It also discusses the differences between a limited liability partnership (LLP) and a typical partnership firm, as well as the structure of an LLP and a business.

2. **Morse, G., 2002. Partnerships for the 21st Century?: Limited Liability Partnerships and Partnership Law Reform in the United Kingdom.** ***Singapore Journal of Legal Studies*****,** The paper then discusses a few broad features of partnership law reform, praising the ideas for legal personality, continuity of association, and simplicity of a partnership definition. It offers changes to the suggestions for partnerships that are being considered, what happens when a partnership contract is repudiated, and how possibly contradictory fiduciary obligations interact if legal personality is added. Finally, it makes a novel legal proposal about the innocent partners' culpability for an accessory obligation incurred by one partner in connection with the firm's operations.

3. **Chaudhry, S., 2010. Limited Liability Partnership in India.** ***SSRN Electronic Journal*****,** In light of the following acts, the purpose of this study was to point out some gaps in the current legal framework governing the taxation of limited liability partnerships in India. It also aims to point out some issues with the conversion of general partnership firms and limited companies into limited liability partnerships. THE FINANCE ACT, 2009; LIMITED LIABILITY PARTNERSHIP ACT, 2008. The researcher has done his or her best to highlight the many gaps in the law that now apply to limited liability partnerships in India, notably those that relate to taxes and convertibility. The research was conducted taking into account the present legal climate in a number of nations, including the United States, Germany, Australia, and the United Kingdom. The researcher also believes that there is plenty of room for more study on this subject.

4. **Kashyap, D. and Kashyap, A., 2010. Limited Liability Partnership as Advantage to Small Business: Indian Scenario.** ***SSRN Electronic Journal*****,** Following the suggestions

of different committees, India's Limited Liability Partnership Act was established in 2008. Even while professional corporations might benefit from the form, small enterprises can actually find it to be of little use. This combines the provisions of the Partnership Act with the Companies Act. LLP seems to be more like a limited company in India, but with the benefits of the partnership act. This study tries to highlight the importance of limited liability partnerships in India in terms of their features & advantages.

5. **Sen, N. and Mathen, N., 2011. DECODING THE NEW BUSINESS VEHICLE OF INDIA: THE LIMITED LIABILITY PARTNERSHIP. *Hein Online*,** The limited liability partnership act of 2008, as well as the tax situation of limited liability partnerships under the Finance Act of 2010, are both thoroughly examined in this article. The article examines the value of this new company structure for small and mediumsized enterprises (SMEs), who are often seen to be the main beneficiaries of the LLP statute, as well as professional service providers.

7. Findings

One of the reasons why the Limited Liability Partnership Act of 2008 was passed was with the intention of providing a boost to both small and medium businesses (also known as SMEs) and start-ups. The following discussion will focus on a few aspects of limited liability partnerships (LLP), with the goal of providing a clearer picture of how startups and small to medium-sized businesses (SMEs) can benefit from LLP and use it to their own advantage:[2]

1. CAPITAL CONTRIBUTION

In contrast to the requirement of Rs 1 lakh for private limited corporations, the minimum capital commitment for a limited liability partnership (LLP) is zero. In addition, the contribution can be given in instalments, which makes it easier for startups and small and medium-sized businesses to take advantage of these privileges and significantly mould their organisational framework or policy decisions.

2. ELIGIBILITY

For the purpose of engaging in any kind of business, trade, profession, service, or vocation, an

[2] Lawyered.in. 2017. *Advantages of Limited Liability Partnership (LLP)*. [online] Available at: <https:// www.lawyered.in/legal-disrupt/articles/advantages-limited-liability-partnership/>.

LLP can be formed by any two or more people who choose to do so. Anyone, including a limited company, a foreign company, an LLP, a foreign LLP, or a non-resident, can be a partner in a limited liability partnership (LLP). According to the most recent clarification, a Hindu Undivided Family (HUF) that is being represented by its Karta is eligible to become a partner in a limited liability company (LLP). This means that small businesses operating from their home can also benefit from the many privileges the LLP act offers.

3. LIMITED LIABILITY PARTNERSHIP

According to Section 26 of the LLP Act of 2008[3], each partner becomes an agent of the LLP but not of the other partners. This clause is likely the most notable element of Indian law on LLP, separating it from a partnership, in which a partner is an agent of the firm and also other partners for the purpose of the firm's activity.

A partner in a limited liability partnership is not personally responsible for any obligation arising in contract, tort, or otherwise purely by virtue of being a partner of the LLP.

Furthermore, a partner shall not be individually accountable for the wrongful act or commission of any other LLP partner. This provision only applies to liabilities resulting from the misbehaviour of other partners. In Edlinger v. The United States[4], the culpability of a partner was affirmed to the degree of their stake in the partnership or act or omission. The Limited Liability Partnership Act of 2008 ensures that a partner's personal assets are not attached to the negligent or wrongful act of his co-partners, thus broadening the horizon for people interested in startups and relieving them of this fear, as opposed to a sole proprietorship or traditional partnership firm where the proprietor's or partners' personal assets could be at risk in the event of a business failure. Unlike a sole proprietorship or a partnership, if an LLP falls bankrupt and is wound up, only the LLP's assets are utilised to pay off its obligations. As a result, this form allows the partners to avoid personal obligations or bankruptcy. It allows them to leverage their professional experience and motivates them to take the initiative to combine financial risk-taking abilities in a creative and efficient manner. As a result, an LLP partner is not personally accountable, directly or indirectly, for any of the LLP's debts or liabilities.

[3] Limited Liability Partnership Act, 2008, S. 26.
[4] No: 3:10-cv-148, 2010 WL 1485951 (NDNY 14-4-2010).

4. EASE IN LOANS

Another reason for forming an LLP for SMEs and startups is the simplicity with which loans can be obtained as security generation becomes simpler. This is because, upon establishment, an LLP is viewed as a body corporate and is deemed a legal entity distinct from its partners. As a result, banks or other financial institutions will be able to enforce securities while making loans, since the LLP may be sued as a distinct legal entity.[5]

5. NO REQUIREMENT FOR COMPULSORY AUDIT

Unlike limited corporations, whether private or public, which are obliged to have their accounts audited regardless of share capital, LLPs are not required to have their accounts audited. Only LLPs with sales of more than Rs 40 lakhs or a donation of more than Rs 25 lakhs are obliged to have their accounts audited yearly by a Chartered Accountant in practice. This is a big compliance advantage for both startups and SMEs. The LLP system combines the benefits of the traditional corporate structure and the entrepreneur-centric proprietary/ partnership structure, and it will facilitate more "marriages between brains and bank balances" within the small enterprise/business sector, just as it is supposed to happen whenever a company in the organised corporate sector issues capital to the public in the form of equity shares or debentures.

Given these benefits, current figures show that entrepreneurs still choose LLPs and that there has been a 26% increase in the establishment of private limited companies. This might be owing to a variety of inherent issues that people face as a result of specific LLP regulations in India. Some of the issues are as follows:”

1. OPERATIONAL FINANCE

Most businesses are self/family financed, with a small team, making it difficult to keep financial and operational records. The LLP must keep such books of account as specified in

Rule 24 of the LLP Rules.[6]

[5] Behura, M., 2022. *LLP will help SMEs attract capital*. [online] The Economic Times. Available at: <https:// economictimes.indiatimes.com/news/economy/finance/llp-will-help-smes-attract-capital/articleshow/ 3954296.cms>.
[6] LLP Act, (n 11), S. 36.

2. FUNDING/CAPITAL DEFICIENCIES

Funding and accessibility to capital have always been issues for small business owners. In contrast to companies, LLPs cannot acquire capital from the general public. Startups and small and medium-sized businesses are already challenged by a lack of funding, and the above-mentioned regulations exacerbate the issue rather than fixing it.

3. LESS BUSINESS CREDIBILITY

In addition to the Indian tradition of looking down on failure, it is a well-known truth that other businesses and many customers or clients do not regard LLP as a reputable firm. Corporations often obtain reputation and respect. People must begin to accept failure and provide second opportunities, as well as become acclimated to changes and progress in the field of corporate law.

4. RESTRICTIONS ON GROWTH

Certain restrictions in LLPs obstruct their long-term development. For example, one may go public by changing a private limited business into a public limited company; but, the LLP Act prohibits the conversion of an LLP into a private limited or a public limited company. This discourages entrepreneurs from choosing the LLP option since it would harm their interests in the long term.

FEATURES OF LLP

- Formation: Every LLP is required to have a registered office. A formation document signed by at least two partners must be prepared and filed with the relevant state government in order to establish an LLP.

- Designated partners: You must name at least two people as designated partners.

- Name of LLP: Every LLP's name must contain the terms "limited liability partnership" or “LLP."

- Books of account: Every LLP is required to compile and submit yearly financial statements in the specified format.

ADVANTAGES OF LLP OVER TRADITIONAL PARTNERSHIP

- An LLP is a legal entity distinct from its partners. It can possess property, engage in contracts, and be sued in its own right. Furthermore, one partner cannot be held liable for the conduct or omission of another.

- The responsibility of partners in an LLP is restricted to the amount they contribute. Except under extreme circumstances, such as a partner's dishonesty, the personal assets of partners cannot be utilised to pay off corporate obligations.

- Any LLP may have as many partners as it chooses. LLPs are often owned and controlled by partners, as opposed to corporations, which are managed by directors.

- Because an LLP is a distinct entity from its owners, it may buy and own property in its own name, unlike a regular partnership, which must buy property in the names of individual members.

- An LLP's participants may write the partnership agreement based on their common understanding and needs. The agreement should specify the parties rights and responsibilities.

Based on the advantages above, it is evident why LLP is preferred over Partnership Firm since it provides the advantages of Partnerships with more preference. The nature of transaction simplicity is preserved in the LLP, and its distinctive standing in the corporate world positions an LLP in a significantly more beneficial position than a Partnership. Small, businesses can benefit greatly from this because they can aim for long-term development and can be prepared to enter the corporate world without the significant restrictions imposed by corporations.

Comparison between LLP of the UK and India.

The UK: [7]

- The name Limited Partnership Act, 2000 was introduced in the year 2000.

[7] Lee, R., 2011. *Key characteristics of Limited Liability Partnerships*. [online] Wrighthassall.co.uk. Available at: <https://www.wrighthassall.co.uk/knowledge-base/key-characteristics-of-limited-liability-partnerships>.

- The LLP is registered at Companies House.

- According to the Limited Liability Partnership Act of 2000, it is a distinct legal entity. It operates on a hybrid of partnership and company law.

- The suffix should be "Limited Liability Partnership" or "LLP/LLLP."

- Foreign nationals may be LLP partners, and both partners can be of any country.

- Contribution is a business or economic action.

- Partners' liability is restricted to the amount they contribute to the LLP.

- Members will be required to pay National Insurance premiums in Classes 2 and 4.

- Every year, an Annual Return must be submitted to the Registrar of Companies.

- Tax responsibility is not subject to corporate income tax, but earnings are dispersed to members who pay personal income tax on their partnership income. The Limited Liability Partnership must submit an annual informative tax return if it is subject to Capital Gains Tax.

- In some instances, the Secretary of State has legislative authority to order a limited liability partnership to alter its name.

- Corporation tax will apply to LLPs that do not carry on business as a trade or profession, such as an investment firm.

India:[8]

- The name Limited Liability Partnership Act, 2008 was established in the year 2008.

- The LLP is registered with the Registrar of Companies.

[8] Singh, A., 2022. *Features of a Limited Liability Partnership - iPleaders*. [online] iPleaders. Available at: <https://blog.ipleaders.in/features-limited-liability-partnership/>.

- According to the Limited Liability Partnership Act of 2008, it is a distinct legal entity.
- The suffix "Limited Liability Partnership" or "LLP" should be added to the name.
- Foreign nationals may become LLP partners.
- The contribution of partners is determined by the LLP Agreement.
- Partners' responsibility is restricted to the amount they contributed to the LLP unless they commit wilful fraud or commit an unlawful act of omission.
- Members will be required to pay National Insurance premiums in Classes 2 and 4. There is no such responsibility.
- Every year, an annual financial statement and a statement of solvency must be submitted with the Registrar of Companies.
- In the United Kingdom, LLPs are not subject to corporate income tax, but earnings are allocated to members, who pay personal income tax on their partnership income. The Limited Liability Partnership must submit an annual informative tax return if it is subject to Capital Gains Tax.
- In some instances, the Central Government has legislative authority to order a limited liability partnership to alter its name.
- LLPs that do not engage in business as a trade or profession, such as an investment firm, will be liable to corporation tax in the United Kingdom. Provisions for taxation have yet to be determined.

Similarities:

- The document must be registered in the LLP Agreement.
- Minimum of two partners, at least two of whom must be Designated Partners.
- The cost of establishing an LLP is cheaper than that of establishing a corporation.

- Designated Partners are in charge of managing day-to-day operations as well as other legislative compliances.

- The LLP is required to pay Corporate Tax at a fixed rate of 30% plus a 3% education cess.

  There is no Minimum Alternate Tax or Dividend Distribution Tax.

- There are no provisions for conducting meetings.

- The keeping of books of accounts is required.

- The transfer regulations are controlled by the LLP Agreement. A limited liability partnership (LLP) may borrow money in its own name.

Conclusion

The establishment of limited liability partnerships (LLPs) should be promoted because of the potential for development in the service sector, the necessity of offering flexibility to small businesses so that they may engage in joint ventures and agreements that allow them to access technology and bring together business synergies, and so that they can compete with the growing global competition provided by the World Trade Organization, among other considerations.

Once the government has identified and closed all of the gaps in the law, limited liability partnerships (LLP) will be an asset not just to new businesses but also to established small and medium-sized businesses. The limited liability partnership (LLP) is the solution to our current problems and will propel our business sector to new heights on a worldwide scale.

Recommendations

National insurance contributions build up your entitlement to contributory benefits. These contributory benefits include:

- Employment and support allowance (ESA)

- Maternity allowance

- Jobseekers' allowance
- Bereavement allowance, widowed parents allowance and bereavement support payment

This benefit is not included in the Indian LLP act and should be introduced. By doing this small businesses can benefit a lot from this which can encourage startups.

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