

Limited Liability Partnership (LLP) [December 2008]

PARLIAMENT PASSES THE LLP: Parliament has passed the Limited Liability Partnership (LLP) Bill 2008. Lok Sabha has also given its assent to the Bill which was earlier passed by the Rajya Sabha. Replying to the debate on the Bill in the Lok Sabha, Shri Prem Chand Gupta, Minister for Corporate Affairs, expressed the hope that the first ever LLP in the country would be registered by the first day of the new Financial Year **i.e. 1.4.2009**. He assured the House that Indian LLPs will in no way be put to any disadvantage and our LLPs will have a level playing field with other similar bodies outside the country.

WHAT IS LLP: LLP is a new corporate form that enables professional expertise and entrepreneurial initiative to combine, organize and operate in an innovative and efficient manner.

For a long time, a need has been felt to provide for a business format that would combine the flexibility of a partnership and the advantages of limited liability of a company at a low compliance cost. The Limited Liability Partnership format is an alternative corporate business vehicle that provides the benefits of limited liability of a company but allows its members the flexibility of organizing their internal management on the basis of a mutually arrived agreement, as is the case in a partnership firm. This format would be quite useful for small and medium enterprises in general and for the enterprises in services sector in particular. Internationally, LLPs are the preferred vehicle of business particularly for service industry or for activities involving professionals.

HISTORY: In our country, several expert groups have examined the need for a concept like LLP since 1972 and recommended from time to time, the enactment of a law that would enable the setting up and functioning of the LLPs. These include the Abid Hussain Committee 1997, the Naresh Chandra Committee on Private Companies and Partnerships 2003 and the Irani Committee for new Company Law, 2005.

An earlier version of the LLP Bill was introduced in the Rajya Sabha around 2 years ago on 15th December, 2006 and was referred to the Parliamentary Standing Committee on Finance. The Standing Committee submitted its report on 27th November, 2007. Taking into consideration the suggestions of the August Committee, the revised Bill, namely the Limited Liability Partnership Bill, 2008 was introduced

in the Rajya Sabha on 21st October, 2008. The House passed it on 24th October, 2008.

Today, the world is in the grip of an unprecedented financial crisis, which is adversely affecting economies of most of the countries, including our own. In such a situation, availability of LLP as an alternative business vehicle to our trade and industry will be an important step. Service industry has grown considerably in India and it accounts for nearly half of our GDP. We believe that the LLPs would further contribute to the growth of the service industry in the future.

SALIENT FEATURES OF THE BILL: As proposed in the Bill, LLP shall be a body corporate and a legal entity separate from its partners. It will have perpetual succession. While the LLP will be 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 unauthorized actions of other partners, thus allowing individual partners to be shielded from joint liability created by another partner's wrongful business decisions or misconduct. The Salient features are as below:

- The LLP will be an alternative corporate business vehicle that would give the benefits of limited liability but would allow its members the flexibility of organizing their internal structure as a partnership based on an agreement.
- The proposed Bill does not restrict the benefit of LLP structure to certain classes of professionals only and would be available for use by any enterprise which fulfills the requirements of the Act.
- While the LLP will be 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.
- LLP shall be a body corporate and a legal entity separate from its partners. It will have perpetual succession. Indian Partnership Act, 1932 shall not be applicable to LLPs and there shall not be any

upper limit on number of partners in an LLP unlike a ordinary partnership firm where the maximum number of partners can not exceed 20.

- An LLP shall be under obligation to maintain annual accounts reflecting true and fair view of its state of affairs. Since tax matters of all entities in India are addressed in the Income Tax Act, 1961, the taxation of LLPs shall be addressed in that Act.
- Provisions have been made in the Bill for corporate actions like mergers, amalgamations etc.
- While enabling provisions in respect of winding up and dissolutions of LLPs have been made in the Bill, detailed provisions in this regard would be provided by way of rules under the Act.

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