

LIMITED LIABILITY PARTNERSHIP

✿ INTRODUCTION:

At present, being a member of a partnership firm is a very risky affair because under partnership law, the partners are liable jointly and severally and most importantly their liability is unlimited which means that the personal property of the partners can also be attached for the satisfaction of the debts in addition to the capital contributed by the partners in the firm. Hence, being a member of a partnership firm is a very risky affair as the liability is unlimited. This is the principal reason why partnerships firms of professionals, such as accountants, lawyers, company secretaries, etc., have not grown in size to meet the challenges posed today by international competition. Not only were firm assets completely liquidated under standard principles of partnership law, the partners were joint and severally liable for the entire liabilities of the partnership. Thus present system act as a deterrent for the growth and expansion of service based organizations. And most importantly, it have depressing effect on the economy and the development prospects of the firm, as every business organisation would have to grow and diversify to reach larger client base around the world. Not only the present legal framework regarding setting up business is incompatible with the policy of globalisation and liberalisation India adopted during 1990s, but it will also have detrimental impact on the foreign direct investment in India.

A limited liability partnership (abbreviated as LLP) has elements of partnerships and corporations. In an LLP one partner is not responsible or liable for another partner's misconduct or negligence. This is an important difference from that of an limited partnership. In an LLP, all partners have a form of limited liability for each individual's protection within the partnership, similar to that of the shareholders of a corporation. However, unlike corporate shareholders, the partners have the right to manage the business directly. As opposed to that, corporate shareholders have to elect a board of directors under the laws of various state charters.

Limited liability partnerships are distinct from limited partnerships, in that limited liability is granted to all partners, not to a subset of non-managing "limited partners". As a result the LLP is more suited for businesses where all investors wish to take an active role in management.

In India, a concept paper on Limited Liability Partnership Law was brought out by the Ministry of Company Affairs in 2005. In the year 2006 the Limited Liability Partnership Bill was introduced in the Parliament. In October 2008, the said Ministry has proposed a new Limited Liability Partnership Bill 2008, which has been submitted to the Parliament for its approval. In November 2008, The Ministry of Company Affairs has notified the concept paper on Limited Liability Partnership (LLP) inviting public comments. The essential feature of an LLP as to Indian context is that it combines the organisational flexibility and tax status of a partnership with limited liability for its partners. The concept of LLP has emerged out of *Naresh Chandra Committee Report on Regulation of Private Companies and Partnership* and of the *DR. J J Irani Committee Report on Company Law*. In India, businesses mainly operate as companies, sole proprietorships and partnerships. The regime of limited liability partnership will provide a platform to small and

medium enterprises and professional firms of Company Secretaries, Chartered Accountants, Advocates etc. to conduct their business/profession efficiently which would in turn increase their global competitiveness.

The Lok Sabha has passed the Limited Liability Partnership Bill on 13th of December 2008 and it will come into effect from the date to be notified. 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 first day of the new financial year i.e., 1.4.2009. The Act provides for an alternative corporate business vehicle that provides the benefit of limited liability but allows its members the flexibility of organizing their internal structure as a partnership based on a mutually arrived agreement.

PROMINENT FEATURES OF LIMITED LIABILITY PARTNERSHIP BILL, 2008.

MEMBERS:

Any two or more persons can form a Limited Liability Partnership (LLP) for the purposes of carrying on any lawful business, trade, profession, service or occupation. Even a Limited Company, Foreign Company, a LLP, a foreign LLP, or a non resident can be a partner of LLP. Although there is no specific mention in the Act, a minor can be admitted to the benefits of partnership. At least one of the partners of LLP must be resident in India. There is no restriction regarding the maximum number of persons who can become partners of a LLP.

Following persons are not eligible to become a partner of LLP:

- a person who has been found to be of unsound mind by the court of competent jurisdiction;
- a discharged insolvent;
- a person who has made an application for being adjudged as insolvent;
- A corporation sole;
- A co-operative society.

INCORPORATION:

- Every LLP has to get itself registered with the Registrar of Companies (ROC) of the state in which the registered office of the LLP is situated.
- The LLP has to file an Incorporation document in Form 2 containing the prescribed particulars along with the prescribed fees. The Incorporation Document has to be signed by two or more partners of the LLP.
- The Incorporation document has to be accompanied by a statement signed by a Chartered Accountant, Company Secretary, a Cost Accountant, or an Advocate who is engaged in the formation of the LLP and any one of the partners who has signed the Incorporation document. The statement shall state that all the requirements of the LLP Act and rules made there under have been duly complied with, in respect of incorporation and matters

- precedent and incidental thereto. The statement shall be filed in Form 3. [Section 11(1)(c)]
- If all the requirements relating to incorporation are complied with, the ROC shall, within a period of 14 days, register the incorporation document and give the certificate that the LLP is incorporated by the name specified therein.
 - The ROC may accept the statement delivered [mentioned *supra*] as sufficient evidence that the requirements imposed by the relevant provisions of the Act has been duly complied with.
 - If a person makes a statement [as mentioned *supra*] which he knows to be false or does not believe to be true, he shall be punishable with imprisonment for a term which may extend to 2 years and with fine which shall not be less than Rs. 10,000/- but which may extend to RS. 500,000/-.
 - It will be necessary for LLP to deposit the prescribed fees with the ROC. On completion of these formalities, the ROC has to register the incorporation document and issue a Registration Certificate under his signature within 14 days. The registration certificate shall be conclusive evidence that the LLP is incorporated by the name specified therein.

Ⓢ **REGISTERED OFFICE:**

- Every LLP shall have a registered office to which all communications and notices may be addressed and where they shall be received [section 13].
- A LLP may give an address for service of documents within the jurisdiction of ROC where its registered office is situated. Such address shall include the postal code and e-mail address. The LLP may, in addition to registered office address, declare any other address as its address for service of documents by following the procedure laid down in LLP agreement. The intimation of other address shall be given to ROC in Form 12 within 30 days [section 13].
- A document may be served on a LLP or a partner or a designated partner thereof by sending it by post under a certificate of posting, or registered post, or courier, or electronic transmission, or by any other manner, as may be prescribed, at the registered office and any other address specifically declared by the LLP for the purpose in such form and manner as may be prescribed.
- A LLP may change the place of its registered office by following the procedure as laid down in LLP agreement and file the notice of such change with ROC in Form 15 and subject to such conditions as may be prescribed and such change shall take effect only upon such filing [section 13].

⑩ STATUS OF LLP:

On incorporation, the LLP will be treated as a Body Corporate with perpetual succession and common seal and will be considered as a legal entity distinct from that of its partners. Any change in the partners of the LLP shall not effect the existence, rights or liabilities of LLP.

⑪ NAME OF LLP:

- The name of the LLP shall not be one prohibited under the Emblems and Names (Prevention of Improper Use) Act, 1950.
- If the proposed name of LLP includes the words chartered accountants, company secretaries, advocates or such similar words as indicative of a profession, as part of proposed name, the same shall be allowed only after obtaining approval from the council of the governing institute or such authority as may be nominated by the Government in this behalf.
- Every LLP will have to use the words "Limited Liability Partnership" or the acronym "LLP" as the last words of its name.
- The procedure for obtaining the name of LLP is the same as for obtaining the name for limited company under the Companies Act.
- Application for this purpose is to be made to the ROC in Form 1 with prescribed fees. The ROC has to ensure that the name selected by LLP is not identical or too nearly resembles to the name of any other partnership or LLP or a corporate body or a registered trademark.
- If the central government is satisfied that that a LLP has been registered under a name which is undesirable or is identical with or too nearly resembles the name of any other partnership firm, LLP or body corporate or a registered trademark or any other name as to be likely to be mistaken for it, it may direct such LLP to change its name, and the LLP shall comply with the said direction within a period of 3 months after the date of direction or such longer period as the CG may allow [section 17].
- Any entity (including firm) which already has a name similar to the name of a LLP which has been incorporated subsequently, can approach the ROC objecting to the name of LLP. Such application can be made in Form 23 within 24 months from the date of registration of LLP. If ROC is satisfied with the objection, after giving hearing to the LLP, he can direct the LLP to change its name.
- The LLP may change its name by following the procedure as laid down in the LLP agreement and notify the same to the ROC in Form 25 along with prescribed fee.

- Every LLP shall ensure that its invoices, official correspondences and publications bear the name, address of its registered office, Registration number of the LLP and a statement that it is registered with limited liability [section 21(1)].

CONTRIBUTION OF PARTNERS:

- Contribution of a partner consisting of tangible, movable or immovable or intangible property or other benefits brought or contribution by way of an agreement or contract for services shall be valued by the practising Chartered Accountant, or by a practising Cost Accountant, or by approved valuer from the panel maintained by the central Government.
- The contribution of each partner shall be accounted for and disclosed in the accounts of the LLP along with nature of contribution and amount.

SPECIAL CHARACTERISTICS:

On registration, a LLP shall, by its name, be capable of:

- suing and be sued;
- acquiring, owning, holding, developing and disposing off property, whether movable or immovable, tangible or intangible;
- having a common seal also, if it decides to have one;
- doing and suffering such other acts and things as bodies corporate may lawfully do and suffer;
- Unless otherwise provided, the provisions of Indian partnership Act, 1932 shall not apply to LLP.

DESIGNATED PARTNERS:

Every LLP shall have at least two 'Designated Partners' who are individuals. At least one of such designated partners must be a resident¹ in India. If all the partners of LLP are corporate bodies, at least two individuals, who are nominees of corporate bodies, will be designated as designated partners [section 7(1)]. The Designated partners shall have the following obligations:

- They are responsible for due compliance of the provisions of LLP Act and Rules, including filing of any document, return, statement, etc. as required by the Act and the Rules [Section 8].

¹ A person who has stayed in India for a period of not less than 182 days during the immediately preceding one year.

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- They are liable for the penalties imposed on the LLP for any contraventions of LLP Act and Rules [section 8].
 - Every Designated partner has to sign the 'Annual financial statement' and 'Annual solvency statement'.
 - An individual shall not become a designated partner in any LLP unless he has given his *prior* consent to act as such to the LLP in Form 9.
 - LLP has to file with the ROC the particulars of every individual who has given his consent to act as designated director within 30 days of his appointment in Form 5 along with fee. [Section 7(4)].
 - The Designated partners are required to obtain a 'Designated Partner Identification Number (DPIN)' in the same manner in which DIN is obtained u/s 266A to 266G of the Companies Act, 1956. He is required to make an application electronically to the Central Government for allotment of DPIN in Form No 7. However, if the individual has already been allotted DIN under Companies (Director Identification Number) Rules, 2006, the same shall be deemed to be DPIN and the holder of DIN shall intimate to the Central Government in Form 25 for the purposes of DPIN.
 - Every Designated partner shall, along with his consent to be a designated partner, intimate his DPIN to the LLP in form 26.
 - Any partner may become a designated partner by and in accordance with the LLP agreement and a partner may cease to be a designated partner in accordance with LLP agreement.
 - The designated partner has no implied authority to conduct day to day business of LLP. It is not essential that power to conduct business should be with the designated partner.
 - If any LLP fails to comply with the provisions of the LLP Act [section 7(1)] in so far it relates to appointment of designated partners, the LLP and its every partner shall be punishable with fine which shall not be less than Rs. 10,000/- but which may extend to Rs. 500,000/-.
 - A person shall not be capable of being appointed as a designated partner of a LLP, if he -
 - is an undischarged insolvent, or has at any time within the preceding 5 years been adjudged insolvent².

² The Central Government may by notification in the official gazette remove this disqualification incurred by any person either generally, or in relation to any LLP or LLPs specified in the notification.

- suspends, or has at any time within the preceding 5 years suspended payment to his creditors and has not at any time within the preceding 5 years made, a composition with them².
- is, or has been convicted by a court of any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than 6 months.

If the LLP does not appoint at least two designated partners or if the number of designated partners falls below two, all partners shall be considered as designated partners.

In the event of any vacancy arising in the office of designated partner due to death, retirement, or otherwise, LLP has to appoint another partner as a designated partner within 30 days of the vacancy arising for any reason [Section 9].

ADMISSION & CESSATION OF PARTNERS:

Any person may join the LLP as a partner if all partners agree to admit him as a partner. Similarly, a partner will cease to be a partner on happening of any of the following events:

- Death;
- Retirement;
- Winding up of the Company or LLP of which he is a partner;
- Declared to be of unsound mind or insolvent.

A person may cease to be a partner of a LLP in accordance with the agreement with the other partners or, in the absence of agreement with the other partners as to cessation of being a partner, by giving a notice in writing of not less than 30 days to the other partners of his intention to resign as partner.

A person who has ceased to be partner of LLP shall still be regarded as a partner of LLP unless the LLP has delivered the notice to the ROC that the former partner has ceased to be a partner. Alternatively, the former partner may himself deliver the notice of cessation to the ROC, if he has reasonable cause to believe that the LLP may not file the notice with the ROC.

For this purpose, the partners will have to execute a fresh partnership agreement recording the terms & conditions of the partnership with revised constitution. Intimation about admission of new partners or cessation of a partner will have to be given to the ROC in the Form 5 within 30 days [section 25(2)].

Every partner shall inform the LLP of any change in his name or address within a period of 15 days of such change and the LLP is required to file a notice with the ROC within 30 days of such change [s. 25(1) & 25(2)].

RELATIONSHIP OF PARTNERS:

- Upon registration of LLP, the partners will have to enter into a partnership agreement in writing. This agreement will determine the mutual rights & obligations of the partners and their rights and duties in relation to LLP.
- This partnership agreement is required to be filed with ROC in Form 4 within 30 days from the date of agreement and prescribed fees should be paid as provided in the rules.
- If the partnership agreement is executed before registration of LLP, the partners will have to ratify this agreement after incorporation of LLP and file with the ROC.
- Whenever there are changes in the terms & conditions of the partnership, LLP has to file the details of the changes in Form 4 with the ROC within 30 days from the date of such changes and pay prescribed fees for the same.
- If the partners do not execute the partnership agreement, the relationship between the partners will be governed by the First Schedule to the LLP Act. The First schedule represents the model partnership agreement. Accordingly, if there is a written agreement but there is no provision therein in respect of any matters contained in First Schedule, the provisions contained in the said schedule shall apply.

REMUNERATION:

The partnership agreement may provide for payment of interest on capital of partners and remuneration payable to the partners. In the absence of any such specific provision, the first schedule to the Act provides that no partner shall be entitled to remuneration for acting in the business or management of LLP.

SHARE OF PROFITS:

The partnership agreement will have to provide for share of each partner in the profits or losses of LLP. In the absence of any such specific provision, the first schedule provides that all the partners of LLP are entitled to share equally in the capital, profits & losses of the LLP.

Further, the rights of a partner to share profits or losses of LLP are transferable either in whole or in part. Such transfer will not mean that the partner has ceased to be a partner or that the LLP is wound up. Such a transfer shall not entitle the transferee or assignee to participate in the management or conduct of the activities of the LLP. Similarly, the transferee will not get any right to any information relating to the transactions of LLP.

⑩ LIMITED LIABILITY OF PARTNERS:

- Each partner of LLP will have to contribute such amount for the business of the LLP as may be determined by the partnership agreement.
- The liability of each partner will be limited to the extent of the amount as specified in the partnership agreement. A partner of LLP is not personally liable, directly or indirectly, for any debts or obligations of LLP. **Every partner of LLP is the agent of LLP but not of other partners.**
- A LLP is not liable to third person for the act of a partner who has no authority to do a particular act and the person dealing with such partners has knowledge about it.
- An obligation of the LLP arising out of any contract or otherwise shall be the sole liability of the LLP.
- The Liabilities of the LLP shall be met out of the property of the firm only.
- An LLP being a separate legal entity is liable for an obligation arising in contract or otherwise and the liabilities of the LLP will be met out of its property. A partner will not be held personally liable, directly or indirectly for an obligation of the LLP, solely by reason of being a partner of the LLP.

However, this liability shield will be withdrawn in case of an act carried out by a LLP with the intent to defraud creditors or for any other fraudulent purposes.

⑪ UNLIMITED LIABILITY:

If at any time the number of partners of an LLP falls below two and the business is carried on by the LLP for more than six months while the number is so reduced, a person who is the only partner of the LLP during the time it carries on business after those six months and is cognisant of this fact will be liable jointly and severally with the LLP for the obligations of the LLP during that period. Therefore, if the number of partners falls below two, the surviving partner will have to admit at least one more partner within a period of 6 months.

Further, a partner will be personally liable for any liability arising from his own wrongful act or omission. The other partners will not be liable for the same.

Where a LLP or any partner, or employee of the LLP has conducted the affairs of the LLP in a fraudulent manner with a intent to defraud creditors of the LLP or any other person, or for any other fraudulent purpose, the liability of the LLP and the partners who acted in fraudulent manner shall be unlimited for all or any of the debts or other liabilities of the LLP. Further, without prejudice to any criminal proceedings, the LLP, its partner, or employee shall be liable to compensate the aggrieved person.

10. MAINTENANCE OF BOOKS OF ACCOUNTS:

- LLP has to maintain such books of accounts as may be prescribed. Such books may be maintained on cash basis or accrual basis of accounting and according to double entry accounting system and shall maintain the same at its registered office for such period as may be prescribed.
- The LLP has to prepare a 'Statement of Accounts' and a 'Solvency Statement' within a period of 6 months from the end of the financial year to which the statement of account and solvency relates. The statement of accounts and the solvency statement have to be filed with ROC in Form 8 within the period of 30 days from the end of aforesaid period of 6 months with the prescribed fee.
- Accounting records which a LLP is required to keep shall be preserved for 8 years from the date on which they are made.
- LLP has to file an annual return with ROC within 60 days of the end of the financial year in Form 11 with the prescribed fees. The annual return shall be accompanied by a certificate from a Company Secretary that he has verified the particulars including the books and records of the LLP and found them to be true and correct.
- Every e-form or application or document or declaration required to be filed or delivered under the Act and the rules made there under, shall be filed in computer readable electronic form, in PDF and authenticated by a managing partner, manager or secretary or person specified in the Act for such purposes by use of a valid digital signature. However, where documents are required to be filed on non judicial stamp paper, the LLP shall submit such documents accordingly in physical form, in addition to their submission in electronic form.

11. AUDIT OF ACCOUNTS:

- The accounts of LLP have to be audited in accordance with the rules unless the LLP is exempt from audit.

Exemption From Audit: A LLP shall be exempt from the audit of its accounts if:

- its turnover does not exceed, *in any financial year*, 40 Lakh rupees; or
- its contribution does not exceed 25 Lakh rupees.

A LLP is not entitled to exemption under any of the provisions unless its account contain a statement by the partners to the effect that the partners acknowledge their responsibilities for complying with the requirements of the rule with respect to accounting records and the preparation of accounts.

However, the accounts of an LLP, which has been exempt from audit as above, for a financial year, shall be audited in any other form and manner as may be decided by the partners.

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- An auditor or auditors of a LLP shall be appointed for each financial year of the LLP (unless the LLP is exempt from the provisions of audit) by the *Designated partners* within 30 days before the end of the financial year. In respect of first financial year of LLP, the auditor(s) may be appointed at any time but before the end of first financial year.
 - An auditor(s) of an LLP shall hold office in accordance with the terms of their appointment and they cease to hold office at the end of the next period for appointing auditors unless re-appointed. Where no auditor has been appointed by the end of the next period, any auditor in office immediately before that time is deemed to be reappointed at that time unless -
 - the LLP agreement requires actual reappointment; or
 - the deemed reappointment is prevented by the partners by giving notice from such number of partners as specified in the LLP agreement³; or
 - the partners have determined that he should not be reappointed; or
 - the designated partners have determined that no auditor(s) shall be appointed for the financial year in question.
 - The designated partners may appoint auditor(s) to fill a casual vacancy in the office of auditor or to fill up the vacancy caused by removal of an auditor.
 - A person shall not be qualified for appointment as auditor of a LLP unless he is a Chartered Accountant in practice.
 - The remuneration of an auditor appointed by the LLP may be fixed by the designated partners or by following the procedure as laid down in LLP.
 - REMOVAL OF AUDITOR: The partners of the LLP may remove an auditor from office at any time by following the procedure as laid down in the LLP agreement. In the absence of any provision in the LLP agreement in respect thereof, consent of all partners shall be required for removal of auditor from his office.
 - RESIGNATION: An auditor of an LLP may resign from his office by depositing a notice in writing to that effect at the LLP's registered office. The notice is not effective unless it is accompanied by the statement of the circumstances connecting with his ceasing to hold office, unless he considers that there are no circumstances in connection with his ceasing to hold office that need to be brought to the attention of partners of the LLP. The notice shall be effective from the date of deposit or from such later date as may be specified in it.

³ the notice must be received by LLP before the end of accounting reference period immediately preceding the time when the deemed re-appointment would have effect.

10 INSPECTION OF DOCUMENTS:

The Incorporation document, name of partners and changes, if any, made therein, statement of account and solvency and annual return filed by each LLP with the ROC shall be available in the electronic registry for public access and inspection in such manner and on payment of such fees as may be prescribed.

11 RESOLUTION & MINUTES:

- Any matter or issue relating to LLP shall be decided by a resolution passed by a majority in number of partners and, for this purpose, each partner shall have one vote.
- No change in the business of the LLP shall be made without the consent of all partners, unless otherwise provided in the LLP agreement.
- Every LLP shall ensure that the decisions taken by it are recorded in the minutes within a period of 30 days of taking such decisions and are kept and maintained at the registered office of the LLP.

12 HOLDING OUT:

- Any person who represents himself or knowingly permits himself to be represented to be a partner in a LLP is liable to any person who has on the faith of any such representation given credit to the LLP irrespective of the fact whether the person representing himself or represented to be a partner does or does not know that the representation has reached the person so giving the credit. However, the LLP shall, without prejudice to the liability of the person holding himself out to be a partner, be liable to the extent of credit received by it or any financial benefit derived thereon.
- Where after the partner's death, the business is continued in the same LLP name, the continued use of that name or of the deceased partner's name as a part thereof shall not of itself make his legal representative or his estate liable for any act of the LLP done after his death.

13 WHISTLE BLOWING:

The court or tribunal may reduce or waive any penalty leviable against any partner or employee of an LLP, if it is satisfied that -

- such partner or employee of a LLP has provided useful information during investigation of such LLP; or
- When any information given by any partner or employee (whether or not during investigation) leads to LLP or any partner or employee of such LLP being convicted under this Act or any other Act.

⑩ TAXATION ISSUES:

The aspect of tax treatment of LLPs remains an area of uncertainty since LLP Act is silent regarding the taxation of LLP under the Income Tax Act. Since the basis structure is that of a partnership and the only difference is that the liability of partners is limited, it is possible that under Income Tax Act, LLP will be recognized as a 'Firm'. In that case, LLP will be taxed at the rate applicable to firm and deduction for interest to partners and remuneration to partners will be allowed as provided in section 40(b) of the Income Tax Act. The balance profits which are distributed to partners will be treated as exempt as provided u/s 10(2A).

Alternatively, only the profits in the hands of the LLP partners will be taxed. A L.L.P. will have Pass through Status (proposed by the Naresh Chandra Committee). The partners will be liable to pay tax on share of LLP's profits received in their hands. The Naresh Chandra Committee Report as well as the Concept Paper on LLPs which was released by the Ministry of Company Affairs had very clearly recommended tax transparency for LLPs, viz., only the LLP partners should be subject to tax and not the LLP itself

Any of the aforesaid alternatives may be followed. For this purpose, we will have to wait for amendments in the Income Tax Act, 1961.

⑩ CONVERSION OF PARTNERSHIP FIRM OR A LIMITED COMPANY INTO LLP:

An existing partnership firm can be converted into LLP by following the procedure laid down in the Second Schedule to the LLP Act subject to condition that all the partners of the LLP so formed comprise all the partners of the Firm and no one else.

A Private Limited Company registered under the Companies Act can convert itself in a LLP by following the procedure stated in the Third Schedule to the LLP Act. A Company may apply for conversion provided all the shareholders of the Company and no one else are going to be the partners of the LLP.

An Unlisted Public Company registered under the Companies Act, can convert itself in a LLP by following the procedure stated in the Fourth Schedule to the LLP Act. A Company may apply for conversion provided all the shareholders of the Company and no one else are going to be the partners of the LLP.

⑩ INVESTIGATION:**COMPULSORY INVESTIGATION:**

The central Government shall appoint one or more competent persons as inspectors to investigate the affairs of a LLP and to report thereon in such manner as it may direct if -

- the tribunal, either *suo moto*, or on an application received from not less than 1/5th of the total number of partners of LLP, by order, declares that the affairs of the LLP ought to be investigated; or
- any Court, by order, declares that the affairs of a LLP ought to be investigated.

DISCRETIONARY INVESTIGATION:

The Central Government may appoint one or more competent persons as inspectors to investigate the affairs of a LLP and to report on them in such manner as it may direct, if -

- not less than 1/5th of the total number of partners of the LLP make an application along with supporting evidence and security amount as may be prescribed; or
- the LLP makes an application that the affairs of the LLP ought to be investigated; or
- in the opinion of the central government, there are circumstances suggesting -
 - that the business of LLP is being or has been conducted with an intent to defraud its creditors, partners or any other person, or otherwise for a fraudulent or unlawful purpose, or in a manner oppressive or unfairly prejudicial to some or any of its partners; or
 - that the LLP was formed for any fraudulent or unlawful purpose; or
 - that the affairs of the LLP are not being conducted in accordance with the provisions of this Act; or
 - that, on receipt of a report of the registrar or any other investigating or regulating agency, there are sufficient reasons that the affairs of the LLP ought to be investigated.

⑪ WINDING UP:

A LLP can be wound up voluntarily. In the alternative, it can be wound up by the National Company Law Tribunal (NCLT) under any of the following circumstances:

- If LLP decides that it be wound up by the tribunal;
- If for a period of more than 6 months the number of partners of LLP is reduced below two;
- If the LLP is unable to pay its debts;

- If the LLP has acted against the interests of the sovereignty and integrity of India, the security of the state or public order;
- If the LLP has made a default in filing with the ROC the statement of Account and Solvency or annual return for any five (5) consecutive financial years;
- If the tribunal is of the opinion that it is *just and equitable* that the LLP be wound up.

④ **STRIKING OFF THE NAME OF DEFUNCT LLP:**

- Where the LLP is not carrying on any business or operation for a period of one year or more and the ROC has reasonable cause to believe the same, the ROC may, either on his own motion or on application of the LLP for removal of its name from the register, shall send a notice to the LLP and all its partners, of his intention to remove the name of LLP from the register. The LLP shall send their representations within a period of 1 month from the date of the notice.
- At the expiry of the time mentioned in the notice, the ROC may, unless cause to the contrary is shown by the LLP, strike its name of the register and shall publish notice thereof in the official gazette, and on such publication, the LLP shall stand dissolved.
- The Tribunal shall have the power to wind up a LLP the name of which has been struck off the register.
- If any LLP, or any partner or creditor thereof, feels aggrieved by the LLP having been struck off the register, an application can be made to Tribunal before the expiry of 5 years from the publication in the official gazette of the notice aforesaid. The tribunal may, if satisfied that the LLP was, at the time of the striking off, carrying on business or in operation or otherwise that it is just that the LLP be restored to the register, order the name of the LLP to be restored to the register and give such directions and make such provisions as seem just for placing the LLP and all other partners in the same position as nearly as may be as if the name of the LLP had not been struck off. The LLP shall be deemed to be have continued in existence as if its name had not been struck off after the certified copy of the order is delivered to the ROC in Form 22 along with the prescribed fee.

⑩ PENALTIES & PROSECUTIONS:

Section	Offence	Penalty
10(1)	Contravention of provisions of Section 7(1) relating to appointment of designated partners.	LLP and every partner shall be liable to: Min: Rs.10,000; Max: Rs. 500,000.
10(2)	Contravention of provisions of section 7(4) & 7(5), 8 and 9 relating to designated partners	LLP and every partner shall be liable to Min: Rs. 10,000; Max: Rs. 100,000.
13(4)	A LLP contravenes any of the provisions of section 13 relating to Registered office	LLP and every partner shall be liable to Min: Rs. 2,000; Max: Rs. 25,000
17(2)	A LLP which fails to comply with a direction given by the central government under section 17(1) relating to change of name.	LLP: Min: Rs.10,000; Max: Rs. 500,000 DP ⁴ : Min Rs. 10,000; Max: Rs. 100,000.
21(2)	A LLP contravenes the provisions of section 21(1)	LLP shall be liable to: Min: Rs. 2,000; Max: Rs. 25,000
25(4)	A LLP contravenes the provisions of section 25(2)	LLP and its every DP above shall be liable to: Min: Rs. 2,000; Max: Rs. 25,000
34(5)	A LLP fails to comply with the provisions of the Act relating to maintenance of Books, filing of statements and audit.	LLP: Min: Rs.10,000; Max: Rs. 500,000. DP ⁴ : Min Rs. 10,000; Max: Rs. 100,000.
35(2)	A LLP fails to comply with the provisions of the Act relating to filing of annual return.	LLP: Min: Rs. 25,000; Max: Rs.500,000 DP ⁴ : Min Rs. 10,000; Max: Rs. 100,000.
37	If any person makes a statement in any return, document, etc., filed with ROC which is false in any material particulars, knowing it to be false; or If he omits any material fact knowing it to be material.	Imprisonment for a term up to 2 years and Fine: Min - Rs. 100,000; Max - Rs. 500,000.
38(3)	Any person who, without lawful excuse, fails to comply with any summons or requisition of the ROC u/s 38.	Min: Rs. 2,000; Max: Rs. 25,000
69	If any document or return required to be filed or registered under this Act with the ROC, if not filed or registered within the time provided therein.	The same can be filed or registered after that time up to a period of 300 days on payment of additional fee of Rs. 100 for every day of such delay ⁵ .

⁴ Designated partner⁵ Such document or return may, without prejudice to any other action or liability under this Act, also be filed after such period of 300 days on payment of additional fee as specified.

70	<u>Enhanced Punishment:</u> If the LLP or any partner or any designated partner commits any offence for second or subsequent time	For second & subsequent time, they shall be liable to imprisonment as provided. In case of offences for which fine is prescribed either with or without imprisonment, they shall be liable to fine which shall be twice the amount of fine for such offence.
73	Any person who fails to comply with any order made by the tribunal under any provision of this Act.	Imprisonment for a term up to 6 months and Fine: Max - Rs. 50,000.
74	Any person guilty of any offence under this Act for which no punishment is expressly provided	Fine - Min Rs. 5,000; Max- Rs. 500,000 and with a further fine of up to Rs. 50 per day during which the default continues.

CONCLUSION:

The LLP will act as an engine of growth for economic development of the country and would lead to the growth of professional services in the country. With the liberalisation and globalisation of Indian economy since 1990s, the LLP, as an alternate mode of carrying business, will encourage joint ventures and would make Indian service sectors globally competitive. LLP structure will enable SMEs and family partnerships to expand as they will be able to admit outsiders with capital or skill as partners. At present, this LLP Act is in form of mini companies Act. The Liability of the partners incurred in the normal course of business is that of LLP and it does not extend to the personal assets of the partners. This is a great relief to the partners, particularly professionals like Company Secretaries, Chartered Accountants, Cost Accountants, Advocates and other professionals. These professionals may also form multi-disciplinary LLPs to meet the changing economic environment. The Government of India should create a facilitating environment for entrepreneurs, service providers and professionals to meet the global competition. Along with that, it is necessary to make suitable changes in the provisions of income tax related with the taxations issues, because taxation is one the major motivational factor other than limited liability for the partners of LLPs. The introduction of LLPs in India is a good beginning towards a long journey. The hybrid structure of LLP will facilitate entrepreneurs, service providers and professionals to organize and operate in an innovative and efficient manner for effectively competing in the global market.