

Preface

India was ushered into a new corporate law arena with a new law on Limited Liability Partnership (LLP), the Limited Liability Partnership Act 2008 (Act No 6 of 2009) coming into force from 31 March 2009. The Act mandates establishment of new forms of business entities—limited liability partnerships—a hybrid form of a partnership firm and a company.

The world over, countries began with traditional partnerships, adopted Limited Partnerships over a period of time (in some countries LPs date back to more than a hundred years) and then evolved the structure of Limited Liability Partnerships which have existed for over a decade now. In Singapore, the sequence was a little different, as after traditional partnerships, LLPs were first adopted in the year 2005 and then, the Limited Partnership Act was passed in November 2008. In India, the concept of Limited Partnerships had never been adopted. Straight from the traditional partnerships, India has adopted the concept of limited liability partnerships.

While it is already existent in many countries, Limited Liability Partnership as a new business structure has been introduced in India only in the year 2009 from 31 March 2009. In some of the countries it has been a recent phenomenon only, while in the others, it has been more than a decade that this form of business structure is being used extensively. For instance, Limited Liability Partnerships (LLPs) came into existence in the state of Texas (US) in 1991, in the UK in 2001, and in Japan and Singapore in 2005. The Indian LLP Act is largely based on the Singapore LLP Act and also includes features of the UK LLP Act. While the following discussion examines the status of LLPs existent in Singapore and UK in detail, it also takes a brief view of LLPs in some of the other countries. According to the concept paper on limited liability partnership prepared by the Government of India in 2005, in view of the increasing role of the service sector in Indian economy, a need was felt for introduction of a new corporate entity—Limited Liability Partnership, that would combine the characteristics of corporate and non corporate entities. As the explanatory note to the LLP Act 2000 in UK states:

The limited liability partnership will be a separate legal entity with unlimited capacity. This means that an LLP can do anything that a natural person could do. It has the ability to enter into contracts and hold property, and will continue in existence in spite of any change in membership. The LLP's existence as a separate legal entity makes it more closely akin to a company than to a partnership (except insofar as the internal relations are governed by agreement between the members). The underlying approach, therefore, was to draw

on the principles enshrined in the legislative treatment of companies.

The Limited Liability Partnership (LLP) is viewed not only as an alternative corporate business vehicle that provides the benefits of limited liability but which also allows its members the flexibility of organising their internal structure as a partnership based on a mutual agreement. The LLP form would enable entrepreneurs, professionals and enterprises providing services of any kind or engaged in scientific and technical disciplines, to form commercially efficient vehicles suited to their requirements. Owing to its flexibility in terms of structure and operation, the LLP would also be a suitable platform for small enterprises and for investment by venture capital. This book in its present form is an attempt to provide a comprehensive commentary on the law and practice relating to the Limited Liability Partnership Act 2008 (Act No 6 of 2009). The book has been conceptualised and structured in such a way so as to provide a section-wise explanation and analysis of the statutory provisions and also to provide valuable inputs to professionals who would be practicing in the area of Limited Liability Partnership.

The book is divided into four parts for easy reference and understanding. Part I provides the scheme of LPP Act at a glance and useful tables on forms to be used for or by LLPs, comparison of LLP with firms and companies and penalties under the LLP Act. Part II of the book contains two chapters providing an overview of Limited Liability Partnerships, explaining its concept, origin, genesis in India, regulatory framework of LLPs in India, overview of the LLP Act, advantages and taxation of LLP etc and law governing LLPs in foreign countries.

Part III of the book provides section by section commentary and explanation of statutory provisions of the LLP Act and Rules framed thereunder. The commentary is supported by judicial interpretation under the Companies Act 1956, wherever relevant. Reference to decided case laws in UK is also provided, wherever required. The commentary is divided into fourteen chapters in accordance with the scheme of the Act itself. One chapter has also been devoted to foreign LLPs. The law is explained in detail and an easy-to-comprehend style.

The rules and forms (as notified under the Limited Liability Partnership Rules 2009 wef 1 April 2009) to be used by LLPs have also been explained so that the practitioners will find the book extremely useful. The draft rules relating to winding up and dissolution of LLPs have been annexed to the related chapter itself.

Part IV of the book contains Appendices which provide the text of the LLP Rules 2009, schedule of prescribed fees, preservation of documents, etc. Readers will also find the extracts of relevant provisions of other Acts applicable to LLPs such as the Companies Act 1956 and the Information Technology Act 2000. Relevant extracts of the Naresh Chandra Committee Report

and JJ Irani Committee Report have also been referred to. The Ministry of Corporate Affairs has issued a set of frequently asked questions on LLPs which are available on its website for public awareness. The same can be referred to in Part IV.

The book has been written with specific reference to the Limited Liability Partnership Act 2008 of India. It is hoped that the book will be found useful by the legal fraternity and professionals like Chartered Accountants and Company Secretaries in India and abroad. It may also serve as a useful guide to companies and firms seeking to incorporate LLPs and as a reference to officials of the Department.

We are extremely grateful to the publishers LexisNexis Butterworths for showing a keen interest in this new subject and steering the project smoothly towards completion in a short span of time. The team at LexisNexis deserves our compliments.

We are conscious of the fact that LLP law is a new law in India and the rules discussed in the book are yet to be notified. We would urge our readers to go through the rules, once they are notified. We welcome suggestions and feedback from readers and fellow professionals for further improvement in the book.

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