

DECODING THE NEW BUSINESS VEHICLE OF INDIA: THE LIMITED LIABILITY PARTNERSHIP

*Nivedita Sen & Neha Mathen**

Considered to be a convenient hybrid between a partnership and company, the Indian limited liability partnership is a business association that merges certain advantages of a partnership with those of a company. This paper traces the evolution of this business vehicle from its genesis in the American state of Texas to the form in which it has been adopted in India. The paper also attempts to give a detailed analysis of the statutory provisions and concepts employed in the Limited Liability Partnership Act, 2008 as well as the tax status of limited liability partnerships under the Finance Act, 2010. The paper tests the usefulness of this new business form for professional service providers as well as small and medium size business concerns, which are widely perceived to be the primary beneficiaries of the LLP Act. The paper concludes that the LLP Act is a welcome addition to the family of business laws in India providing multiple advantages to its targeted beneficiaries. With the example of an association of lawyers, however, it is evident that certain glaring omissions prevent it from truly filling the void between companies and partnerships.

I. INTRODUCTION

The limited liability partnership ('LLP') is viewed as an 'alternate corporate vehicle'¹ which seeks to attain the principal benefits of both forms of business organization- partnerships and companies. This is achieved by granting, to the members of the LLP, the flexibility of organizing their internal managerial structure as a partnership based on mutual agreement, while limiting the liability of the partners to the extent of their interest in the partnership, which is akin to the separate legal personality of a company.²

Since the benefits of similar business organizations have been incorporated into this new business form, it is necessary to highlight the

* 4th & 2nd year students respectively, the W.B. National University of Juridical Sciences, Kolkata.

¹ Ministry of Corporate Affairs, Government of India, *Need for the New Corporate Form- LLP*, available at <http://www.llp.gov.in/aboutllp.htm> (Last visited on December 26, 2011).

² Amit M. Sachdeva & Sachin Sachdeva, *The Indian LLP Law: Some Concerns for Lawyers and Chartered Accountants*, SEBI & Corporate Law, Vol. 92 No. 6, 2009, 1 available at <http://ssrn.com/abstract=1423766> (Last visited on December 22, 2011).

advantages of the LLP over such similar business forms. It is as a result of these very advantages that LLPs, as business vehicles, have been allowed in several jurisdictions and multiple pieces of legislation have been enacted to regulate them.

A general partnership is a partnership in which the partners share equally in responsibility and liability. The primary distinction between an LLP and a general partnership is that a general partnership has no legal existence separate from the partners who constitute it, while an LLP exists as a legal entity separate from its partners.³ In a general partnership, every partner is liable jointly along with the other partners of the firm, and also severally, for all acts of the firm done while he is a partner.⁴ In an LLP, however, no partner is made liable for the actions of another partner beyond his/her share in the partnership. Further, unlike a partnership, members of an LLP are not agents of each other.⁵

In the separate case of a limited partnership, at least one of the partners is required to be a 'general partner'. As a consequence, the benefit of limited personal liability is not available to all partners, and the 'general partner' who is in control of the ordinary day-to-day business of the firm has unlimited personal liability.⁶ An LLP, on the other hand, has no general partners and thus every partner in the LLP is endowed with limited personal liability for business debts.⁷

A company has a corporate regulatory regime for most purposes, except in the case of taxation, for which it is treated as a partnership. An LLP is treated as a company, *inter alia*, with respect to the extent of liability of the partners. For other purposes, the LLP has a partnership regulatory regime, which permits the partners the flexibility of internal organization based on mutual agreement.⁸ An LLP also has a simpler and less expensive process of formation as compared to a company.⁹

The concept of LLP initially emerged in the US and the UK. With growing litigation against law firms and accounting firms in those jurisdictions, the need arose for a device to limit the liability of partners in such firms, especially in cases where professionals including lawyers and accountants were being exposed to large amounts of money in liability. Thus, the concept of LLPs

³ LLP Act, 2008, §3(1).

⁴ Indian Partnership Act, 1932, §25.

⁵ *Benefits of LLP*, available at <http://www.llphelpline.com/benefits-of-llp.htm> (Last visited on December 26, 2011).

⁶ Peri Pakroo, *Limited Partnerships and Limited Liability Partnerships*, available at <http://www.nolo.com/legal-encyclopedia/limited-partnerships-limited-liability-partnerships-29748.html> (Last visited on December 26, 2011).

⁷ LLP Act, 2008, §§27 and 28.

⁸ Pakroo, *supra* note 6.

⁹ *Supra* note 5.

was developed with a view to providing a suitable business vehicle for professionals like lawyers and accountants.¹⁰

In India, the need for the Limited Liability Partnership Act, 2008 ('LLP Act') was described by the Ministry of Corporate Affairs in the following words:

“With the growth of the Indian economy, the role played by its entrepreneurs as well as its technical and professional manpower has been acknowledged internationally. It is felt opportune that entrepreneurship, knowledge and risk capital combine to provide a further impetus to India’s economic growth. In this background, a need has been felt for a new corporate form that would provide an alternative to the traditional partnership, with unlimited personal liability on the one hand, and, the statute-based governance structure of the limited liability company on the other, in order to enable professional expertise and entrepreneurial initiative to combine, organize and operate in flexible, innovative and efficient manner.”¹¹

Having presented an overview of the concept of LLP and the advantages and need for the LLP Act, Part-II provides an insight into the history of LLPs across various jurisdictions, with special reference to the US and the UK. Part-III critically analyses the LLP Act with particular emphasis on provisions relating to incorporation, conversion, arrangement, winding up and liability of partners. Part-IV tackles the question of taxation of an LLP under the LLP Act. Part-V describes the impact of the LLP Act on advocates, with particular reference to the maximum number of partners allowed in an LLP and the right of an LLP to represent in court. Finally, Part-VI concludes by examining the overall impact of the LLP Act on businesses, particularly small enterprises.

II. HISTORY OF THE LLP ACT

A. EMERGENCE OF LLPS IN THE US

The concept of LLP arose in the US in the aftermath of the real estate and energy price crisis in the 1980s, during which liability was directed towards the lawyers and accountants who had represented the failed financial

¹⁰ J.J. Henning, *Partnership Law Review: The Joint Consultation Papers and the Limited Liability Partnership Act in Brief Historical and Comparative Perspective*, COMP. LAW. 2004 25(6) 163, 169.

¹¹ Ministry of Corporate Affairs, *supra* note 1.

institutions.¹² There were some partners who had not been involved in advising these institutions but were nevertheless held liable on account of their personal assets. This brought to the forefront the urgent need for limited liability in partnerships.¹³ The first law on LLP came into existence in Texas, through the enactment of Texas House Bill 278 on August 26, 1991. With the promulgation of the Revised Uniform Partnership Act ('RUPA') in the US in 1994, a number of states permitted the formation of LLPs, which was followed by the incorporation of comprehensive provisions dealing with LLPs in the RUPA in 1997.¹⁴ By the end of 2001, the concept of LLPs had spread to all 50 jurisdictions of the US.

The Texas LLP model does not release the partners from liability in cases of the partnership's non-malpractice contractual and tort liabilities; instead the partners are only prevented from being held vicariously liable in cases of a co-partner's negligence, error, omission, incompetence or malfeasance. In fact, the structure of LLPs varies from state to state in the US. Accordingly, some states, including Delaware, have adopted a more expansive approach that ensures that any liability, in tort, contract, or otherwise will solely be the liability of the partnership. Thus, under such models of LLPs, the partner cannot be held liable simply by reason of being a partner.

B. LLP STRUCTURE IN THE UK

Following the introduction of the concept of LLPs in Texas, major accounting firms in the UK raised a campaign for the creation of LLPs in order to limit the liability of an individual partner to acts specifically involving that particular partner. Accordingly, the UK Companies Act, 1989 was amended to allow accounting firms to work as limited liability companies. General partners in charge of the ordinary day-to-day activities of the firm were, however, still held jointly and severally responsible. This was achieved by a campaign in the 1990s calling for proportional liability in partnership firms.¹⁵ Owing to the rising demand, the Limited Liability Partnership Act was passed in the UK in the year 2000.

The UK LLP Act is based on three broad principles- limited liability, corporate personality and partnership flexibility. The primary distinction

¹² Robert W. Hamilton, *Registered Limited Liability Partnership: Present at the Birth (Nearly)*, 66 U. COLO. L. REV. 1065, 1069 (1995). See also Henning, *supra* note 10, 168.

¹³ See Alberta Law Reform Institute, *LIMITED LIABILITY PARTNERSHIP FINAL REPORT* No. 77 (April, 1999) 37, available at <http://www.assembly.ab.ca/lao/library/egovdocs/alilr/1999/67876.pdf> (Last visited on December 30, 2011).

¹⁴ Amendment to Uniform Partnership Act, 1996 leading to the Uniform Partnership Act, 1997.

¹⁵ Ashish Ahuja, *Limited Liability Partnership Act, 2008- Some Issues*, available at http://www.bcasonline.org/webadmin/res_material/resfiles/LM%20Ashish%20Ahuja%204Feb09.pdf (Last visited on December 26, 2011).

between the US Delaware LLP model¹⁶ and the UK LLP model is that while the former regards the LLP as essentially a partnership, the latter primarily treats it as a company.¹⁷ The existence of an LLP in the UK as a separate legal entity means that it has its own rights and liabilities, distinct from those of its members.¹⁸ In the UK, an LLP differs from a company to the extent that the former has greater organizational flexibility and is taxed as a partnership. In the UK, LLPs are accorded ‘entity’ treatment whilst partnerships governed by the provisions of the UK Partnership Act are generally treated as aggregates of individuals.¹⁹

The Indian LLP Act, 2008 finds its basis in the UK LLP Act and hence, an overview of some of the decisions rendered by English courts on the nature of an LLP would be useful. Regarding the imposition of liability for the tort of negligence, the initial general rules required the use of the ‘assumption of responsibility’ justification.²⁰ This principle came to be implemented after *Hedley Byrne v. Heller*,²¹ where the House of Lords held that law would imply a duty of care when a party possessed of a special skill is trusted to exercise due care, and when that party knew or ought to have known that reliance was being placed on his skill and judgment.

Post the enactment of the UK LLP Act, there have been considerable changes in the liability of a firm and partners, with respect to the negligence of a co-partner.²² In the case of *Dubai Aluminium Co Ltd v. Salaam*,²³ one of the partners of a law firm (not an LLP) made agreements that were used for fraud/sham contracts. The House of Lords held that even acts not authorized by the co-partners could be said to be done “in the ordinary course of the busi-

¹⁶ Under the Delaware Code, §15-101(8) (Delaware Revised Uniform Partnership Act, Title 6, Chapter 15), only a partnership may become a LLP, and hence the basis of the LLP is the partnership. See R. WOOD, LIMITED LIABILITY PARTNERSHIPS 48 (1997). See also *supra* note 13, 42 (which suggests that the US LLP is “best described as an ordinary partnership whose members are equipped with a liability shield”).

¹⁷ Limited Liability Partnership Act, 2000, §1(2) (which provides that the UK LLP is a body corporate with legal personality separate from that of its members). See V. Finch and J. Freedman, *The Limited Liability Partnership: Pick and Mix or Mix-Up*, [2002] JBL 475, 483.

¹⁸ Yeo Hwee Ying, *Liability of Partners in a Limited Liability Partnership Regime*, (2003) 15 SAclJ 392; See Re, Rogers, [2006] EWHC 753 (Ch) (in this case it was determined that if a will appointed partners in a firm as executors, this would include the profit-sharing members of the LLP as well).

¹⁹ *Id.*

²⁰ See Barker, *Unreliable Assumptions in the Modern Law of Negligence*, (1993) 109 LQR 461; Hepple, *The Search for Coherence*, (1997) CURRENT LEGAL PROBLEMS, Vol. 50, 67, 88.

²¹ *Hedley Byrne & Co Ltd v. Heller & Partners Ltd*, [1964] AC 465.

²² See generally Young, *Limited Liability Partnerships – A Chance for Peace of Mind*, (2000) BUSINESS L. REV. 257; See also Morse, *Partnerships for the 21st Century?: Limited Liability Partnership and Partnership Law Reform in the UK*, [2003] SINGAPORE JOURNAL OF LEGAL STUDIES 455 (for the differences and similarities between the liabilities of Company-Directors and LLP-Partners); Freedman, *Limited Liability Partnerships in the UK—Do they have a role for Small Firms?*, 26 JOURNAL OF CORPORATION LAW 897.

²³ [2002] UKHL 48.

ness of the firm” if, for the purpose of the firm’s liability vis-à-vis third parties, it could fairly and properly be regarded as done by the partner while acting in the ordinary course of the firm’s business. Such acts would then be capable of attracting personal liability for the other partners also and vicarious liability for the firm.²⁴ Thus, this decision delineated the extent of liability of partners in a general partnership. Further, the Chancery Division of the High Court of England and Wales in the case of *Re: Magi Capital Partners LLP*,²⁵ was of the view that in matters of dissolution, an LLP is similar to a company rather than a partnership, since it involves the winding up of a separate legal entity, incorporated under a statute. Hence, as a general rule, an LLP cannot be wound up by an arbitrator. Finally, Court observed in *Hailes v. Hood*,²⁶ that while a member of an LLP will have various interests in the LLP; the extent of these interests of any one member may vary, depending on the point in time at which and the context in which they are being considered. These cases demonstrate that the concept of LLPs is a complex one, which cannot be determined solely on the basis of either company law or law of partnerships.²⁷

C. BASIS OF THE LLP STRUCTURE IN INDIA

The LLP Act is broadly based on the UK LLP Act, 2000 and the Singapore LLP Act, 2005. Although this new business form carries the designations ‘partnership’ and ‘limited’, an LLP in the UK is governed neither by the Partnership Act, 1890 nor the Limited Partnership Act, 1907, which were already in force at the time of formation of LLPs. In general, therefore, the law of partnership will not be applicable to LLPs in the UK. Nevertheless, for taxation purposes, an LLP is treated as a partnership, so as to ensure that the choice between an LLP and a partnership is a tax-neutral one. Further, an LLP in the UK can be formed by two or more persons with a view to make profits lawfully; it is not restricted solely to the largely professional partnerships such as those of law and accounting firms. An LLP, in the UK, is a body corporate with a separate legal entity under the LLP Act, 2000.²⁸ The registration of LLPs is to be done with the Companies House. There should be a minimum of two members to form the LLP,²⁹ and further at least two of the members should be designated members. These designated members are responsible for carrying out the day-to-day business and statutory compliances. An LLP can borrow money in its own name. Foreign nationals can be partners of an LLP. The cost of formation of an LLP in the UK is less as compared to the cost of formation

²⁴ Sachdeva & Sachdeva, *supra* note 2, 9.

²⁵ [2003] EWHC 2790 (Ch).

²⁶ [2007] EWHC 1616 (Ch).

²⁷ Sachdeva & Sachdeva, *supra* note 2, 11.

²⁸ Limited Liability Partnership Act, 2000, §1(2).

²⁹ *Id.*, §§2(1) and 8.

of a company. The liability of partners is limited to the extent of the amount of capital they have contributed towards the LLP.³⁰

LLPs were introduced in Singapore on April 11, 2005. All LLPs in Singapore are required to be registered with the Registrar of Companies. An LLP in Singapore is a separate legal entity under the Limited Liability Partnerships Act, 2005.³¹ There must be a minimum of two members to form an LLP and at least two of the members should be designated members.³² A partner is not personally liable for any obligation arising in tort, contract, or otherwise, solely by reason of being a partner of the LLP.³³ In addition, a partner shall not be personally liable for the wrongful act or commission of any other partner of the LLP.³⁴ Only liability arising from the misconduct of other partners is covered by this law; the partnership is not relieved from liability for other partnership obligations. The contribution of partners to the LLP is as per the LLP agreement and the cost of formation of an LLP in Singapore is less, as compared to the cost of formation of a company. An LLP is wound up voluntarily or by order of the court.³⁵

D. DRAFTING HISTORY OF THE LLP ACT

During the process of the revision of the Indian Partnership Act, 1932 in 1957, a suggestion was made by the merchants of the iron, steel and hardware industries to include a provision for limited liability in partnerships.³⁶ This was for the simple reason that the Companies Act had too many restrictions and was proving to be very cumbersome, especially for small businesses.³⁷ This suggestion was rejected by the 7th Law Commission.³⁸ Soon after, the Bhatt Committee in 1972 and the Abid Hussein Committee in 1997 recommended limited liability partnerships for small scale industries, so as to encourage more people to invest in small scale enterprises.³⁹

It was, however, the Naresh Chandra Committee Report in 2003 that highlighted the grave need to introduce LLPs in the service industry,

³⁰ *Id.*, §10(1).

³¹ Limited Liability Partnership Act, 2005, §4(1).

³² *Id.*, §22(1).

³³ *Id.*, §8.

³⁴ *Id.*, §8(3).

³⁵ *Id.*, §30.

³⁶ Law Commission of India, SEVENTH REPORT ON PARTNERSHIP ACT, 1932, 1957, 8 available at <http://lawcommissionofindia.nic.in/1-50/Report7.pdf> (Last visited on December 26, 2011).

³⁷ *Id.*

³⁸ *Id.*

³⁹ See *Various Committee Reports*, available at <http://www.llphelpline.com/various-committee-reports.htm> (Last visited on December 22, 2011).

which finally succeeded in launching the concept of LLPs in India.⁴⁰ This was soon followed by the recommendations of the J. J. Irani Expert Committee on Company Law in 2005 to enact a separate legislation for LLPs in India, and also to extend the scope of LLPs to the small enterprises.⁴¹

Following the recommendations of the Naresh Chandra Committee and the J. J. Irani Expert Committee, the Ministry of Corporate Affairs floated a Concept Paper on LLP, the response to which formed the backbone of the first draft LLP Bill, 2006.⁴² On May 1, 2008, the Cabinet approved the introduction of the revised LLP Bill, 2008 in Parliament.⁴³ Thus, the LLP Bill was introduced in the Rajya Sabha on October 21, 2008. After being passed in the Upper House on October 24, 2008, the Bill was tabled in the Lok Sabha, which also passed the Bill without any changes.⁴⁴ On January 7, 2009, the LLP Bill received the assent of the President and was thereafter notified in the Official Gazette in 2009, and the LLP Act was put into force by the Central Government on March 31, 2009. The LLP Rules were made effective by the Central Government from April 1, 2009.⁴⁵ The Ministry of Corporate Affairs has also issued two notifications on July 5, 2011 and November 4, 2011, thereby amending the LLP Rules.⁴⁶

Through the LLP Act, the Government endeavours to give entrepreneurs the benefits of separate legal entity together with organizational suppleness and narrow disclosure requirements.⁴⁷ In this way the LLP Act provides for “the formation and regulation of limited liability partnerships” in India.⁴⁸

⁴⁰ Naresh Chandra Committee-II, REPORT OF THE COMMITTEE ON REGULATION OF PRIVATE COMPANIES AND PARTNERSHIP, ¶3.11, Recommendation 3.1 available at http://www.llponline.in/naresh_chander_committee.php (Last visited on December 26, 2011).

⁴¹ See Recommendations of the J.J.Irani Committee available at http://www.llponline.in/jj_irani_committee.php (Last visited on December 26, 2011).

⁴² Amit M. Sachdeva & Yamini Mahajan, *Indian Limited Liability Partnership Law: Some Concepts and Concerns*, February 22, 2010, 2 available at <http://ssrn.com/abstract=1557002> (Last visited on December 22, 2011).

⁴³ *Cabinet Approves Limited Liability Partnership Bill, 2008*, May 1, 2008, available at <http://news.webindia123.com/news/Articles/India/20080501/944271.html> (Last visited on December 26, 2011).

⁴⁴ Sachdeva & Mahajan, *supra* note 42, 2.

⁴⁵ The LLP Rules may be accessed at <http://www.llp.gov.in/tolink/LLPRulesasnotified.pdf> (Last visited on December 26, 2011).

⁴⁶ The two notifications may be accessed at [http://www.llp.gov.in/files/draft%20notification%20for%20DIN%20&%20DPIN%20Rules%20\(amended\).pdf](http://www.llp.gov.in/files/draft%20notification%20for%20DIN%20&%20DPIN%20Rules%20(amended).pdf) and <http://www.llp.gov.in/files/Notification.pdf> (Last visited on December 26, 2011).

⁴⁷ Sachdeva & Mahajan, *supra* note 42, 2.

⁴⁸ Preamble to the LLP Act, 2008.

III. CRITICAL OVERVIEW OF THE LLP ACT

There are two basic models of LLPs witnessed around the globe as explained above. The first is the Texas LLP model. Under this model, the partners' vicarious liability is limited to the wrongful acts of the partnership and not for liability arising in the ordinary course of business.⁴⁹ The second model, known as the Delaware model, is one where all obligations of the LLP are solely the liability of the LLP and the partners are not personally liable for any action arising in tort, contract, etc.⁵⁰ The LLP Act draws greater inspiration from the Delaware model than the Texas model.

§3 of the LLP Act clarifies that an LLP is a body corporate having a separate legal existence distinct from its partners. It has all the incidental characteristics of a body corporate including that of perpetual succession, ability to sue and be sued, and a common seal.⁵¹ Any such partnership mandatorily needs to incorporate the term "limited liability partnership" or "LLP" at the end of its name.⁵² The LLP Act was drafted to ensure transparency in the regulation of LLPs and to prevent defrauding of creditors while also giving partners the flexibility to conduct internal affairs. In a sense, the Magna Carta for an LLP is the LLP agreement drafted by the partners. To act as a watchdog, however, the LLP Act provides for a comprehensive investigation mechanism, empowering the Registrar to call for information before incorporation, and empowering the Central Government to appoint inspectors to inquire into the affairs of the LLP.⁵³ Furthermore, disclosure of the financial statements of the LLP is compulsory and any contravention with the relevant provisions attracts severe penalty.⁵⁴

A. INCORPORATION, CONVERSION, ARRANGEMENT, RECONSTRUCTION AND WINDING UP ISSUES FOR AN LLP.

The incorporation of an LLP is by registration.⁵⁵ The incorporation of an LLP is conveniently and efficiently conducted in a time saving

⁴⁹ Amit M. Sachdeva & Sachin Sachdeva, *The India LLP Law: Some Concerns for Lawyers and Chartered Accountants*, February 4, 2009 available at <http://www.vaishlaw.com/article/LLP%20Law%20-%20Taxmann-Amit%20Sachdeva.pdf> (Last visited on December 26, 2011).

⁵⁰ *Id.*

⁵¹ LLP Act, 2008, §§3 and 14.

⁵² *Id.*, §15(1).

⁵³ See LLP Act, 2008, §38 and Chapter IX.

⁵⁴ See LLP Act, 2008 Chapter VII.

⁵⁵ See LLP Act, 2008, Chapter III.

manner through electronic means without physically filing any documents.⁵⁶ The procedural requirements for incorporating an LLP are along the lines of the procedure for incorporating a registered company under the Companies Act. The ‘memorandum of association’ of a company has been substituted with an ‘incorporation document’ in the case of an LLP.⁵⁷ The process of creating an LLP being almost identical to that of companies has ensured that a mechanism that has already withstood the test of time is being implemented for the formation of a new business vehicle, thereby insulating LLPs from the risks of facing practical difficulties of a new procedure that may appear flawless on paper.

The LLP Act permits a foreign LLP to register a place of establishment in India in accordance with rules formulated by the Central Government.⁵⁸ This provision is a laudable initiative to attract foreign direct investment and provide opportunities to global business concerns to conduct flourishing business activities in India, consequently enabling India’s economy and GDP to reap its benefits. Some discrepancies, however, arise as a result of lack of clarity on the law. *Firstly*, a foreign LLP conducting business in India, through its establishment in the country, will certainly exercise control over the management of its affairs in India. Therefore, according to the Income Tax Act, 1961, it will have the status of a resident in India.⁵⁹ Consequently, the worldwide income of a foreign LLP in a financial year will be taxed in India.⁶⁰ Hence, taxation of foreign LLP requires separate provisions. *Secondly*, confusion prevails on the consideration for the statement of accounts, statement of assets and liabilities, and annual turnover for statutory audit compliance regarding whether the value should be merely India intensive or whether the worldwide figures should be computed.⁶¹ *Thirdly*, since a foreign LLP is not incorporated within Indian jurisdiction, there is a possibility of more than one LLP having the same name that exist and conduct business in India.⁶² Keeping such concerns in mind, the provision on foreign LLPs requires reconsideration and redrafting to plug the existing loopholes.

An existing general partnership firm, private limited company and unlisted public company can migrate to an LLP under the LLP Act.⁶³ A sole proprietorship, society or trust cannot, however, convert do so. The term ‘convert’ in the Second, Third and Fourth Schedules has been defined as:

⁵⁶ See <http://www.llp.gov.in/> (Incorporation of LLPs can be conducted through this website by simply filling in the required forms online).

⁵⁷ See LLP Act, 2008, §11 and Companies Act, 1956 §13.

⁵⁸ LLP Act, 2008 §59.

⁵⁹ See Income Tax Act, 1961, §§6(2) and (4).

⁶⁰ Ashwin Shah, *Incorporation and Registration of LLP*, 6 INCOME TAX REV. Vol. XXXV 18 (September 2009), 20.

⁶¹ *Id.*

⁶² *Id.*

⁶³ See LLP Act, 2008 Chapter X, Second, Third and Fourth Schedule.

“a transfer of the property, assets, interests, rights, privileges, liabilities, obligations and the undertaking of the firm/private limited company/unlisted public company to the limited liability partnership.”

Based on this definition, it must be noted that the profits and gains arising from a transfer of capital assets are taxable under the Income Tax Act, 1961.⁶⁴ Therefore, it appears that conversion to an LLP is a transfer of assets and liabilities between the transferor partnership/private limited company/unlisted public company and the transferee LLP. Nevertheless, it is submitted that there is no transfer between two entities but only a transmission or appropriation. The Bombay High Court has held that a partnership firm converting itself into a limited company does not constitute a transfer as there is neither a transaction between a party and counter-party, nor any distribution of assets involved, but merely vesting of the property in the company.⁶⁵ Similarly, a conversion to LLP will not be a transfer for the purpose of taxation irrespective of the definition of ‘convert’. This position has been adopted by the Finance Act, 2010 which provides that conversion to a LLP will not entail any tax implications.⁶⁶

A partnership converting to an LLP needs to provide details of its registration.⁶⁷ Registering a partnership is, however, optional.⁶⁸ Sometimes even on filing an application, a partnership may not be registered.⁶⁹ Therefore, effectively an unregistered partnership is inhibited from converting into an LLP. The most glaring omission of the law regarding this issue, however, is the conversion of an LLP into other business forms like company and partnership. Therefore, currently, once an LLP comes into existence, it has to remain in that form till its winding-up and dissolution, and only subsequently can the partners form a partnership or company utilizing the erstwhile assets of the LLP.

Mergers and acquisitions have become common company activities and such activities are regulated by comprehensive statutory framework. This concept has been extended for LLPs as Chapter XII of the LLP Act provides for compromise, arrangement or reconstruction. Closer analysis of the LLP agreement is, however, required as these agreements will undergo alterations as a result of the compromise. The LLP Act is also supplemented by the

⁶⁴ See Income Tax Act, 1961 §§2(47) and 45(1).

⁶⁵ Commissioner of Income Tax v. Texspin Engineering and Manufacturing Works, (2003) 263 ITR 345 (Bom) (The expression ‘transfer of a capital asset’ in §45(1) is required to be read with §2(47)(ii) (which states that the transfer in relation to a capital asset shall include extinguishment of any rights therein); see also Anant Pai, *LLP-Its Incidental Tax Considerations*, 6 INCOME TAX REV. Vol. XXXV 61 (September 2009).

⁶⁶ See Finance Act, 2010 §10 and Income Tax Act, 1961 §47.

⁶⁷ LLP Act 2008, Second Schedule, §4.

⁶⁸ See Indian Partnership Act, 1932, §69.

⁶⁹ Paras Savla, *Conversion to LLP*, 6 INCOME TAX REV. Vol. XXXV 42 (September 2009), 49.

LLP Rules.⁷⁰ The provisions governing such compromise for an LLP are similar to the provisions in the Companies Act.⁷¹ The concerned tribunal is vested with the power to sanction such an agreement in both cases. There is, however, no allotment or appropriation of any shares, debentures or interest through a compromise or agreement in an LLP unlike a company. Furthermore, the procedural requirements (like notice of hearing, report on working of compromise or arrangement, directions at hearing of application and so on) for such a compromise are fewer for an LLP as compared to a company.⁷² Chapter XII of the LLP Act is favourable for small and medium scale business associations that can now avail its benefits, thereby increasing the attractiveness of forming a LLP.

The winding up of an LLP may either be voluntarily undertaken by the partners or by the National Company Law Tribunal on the realisation of certain contingencies.⁷³ This provision is based on the Singapore LLP Act, 2005.⁷⁴ The Central Government has been empowered to make further rules thereby ensuring an easier process for winding up as compared to the complex procedures involved in the winding up of a company.⁷⁵ Pursuant to this, the LLP (Winding up and Dissolution) Rules, 2010 were passed by the Central Government providing the procedure for both voluntary and non-voluntary winding up.⁷⁶

B. PARTNERS AND THEIR LIABILITIES

§2(q) of the LLP Act defines a 'partner' as one who becomes a partner in the LLP in accordance with the LLP agreement. In addition, any person who subscribes her name in the incorporation document of an LLP is a partner of the LLP.⁷⁷ One of the most unique features of the LLP Act is that a partner in an LLP may not necessarily be an individual. A body corporate is capable of becoming a partner.⁷⁸ A minimum of two partners is required to form an LLP.⁷⁹ An LLP must have a minimum of two designated partners and at least one of them has to be a resident of India.⁸⁰ Initially, designated partners

⁷⁰ See Limited Liability Partnership Rules, 2009, Rule 35.

⁷¹ See LLP Act, 2008, Second Schedule, §§60-64 and Companies Act, 1956 §§391-394.

⁷² Compare Limited Liability Partnership Rules, 2009 Rule 35 with Company (Court) Rules, 1959 Rules 67-87. See also Nitin Poddar, *LLP Restructuring*, 35(6) INCOME TAX REV. 50 (2009).

⁷³ LLP Act, 2008, Chapter XIII.

⁷⁴ See Singapore LLP Act, 2005 Fifth Schedule, Part II, §3.

⁷⁵ REFERENCER ON THE LIMITED LIABILITY PARTNERSHIP BILL, 2006, 79 (The Institute of Company Secretaries of India, January 2007).

⁷⁶ These Rules are available at <http://www.llp.gov.in/tolink/llp%20winding%20up%20rules%20corrected.pdf> (Last visited on December 30, 2011).

⁷⁷ LLP Act, 2008 §22.

⁷⁸ *Id.*, §5.

⁷⁹ *Id.*, §6(1).

⁸⁰ *Id.*, §7(1).

were compulsorily required to obtain their Designated Partner Identification Number ('DPIN') from the Central Government.⁸¹ The Ministry of Corporate Affairs through its notification dated July 5, 2011, has, however, integrated the Director's Identification Number ('DIN') issued under the Companies Act with the DPIN, with effect from July 9, 2011.⁸² As a result, any individual intending to be appointed as a designated partner of an LLP will have to obtain a DIN from the Central Government.⁸³ Moreover, in the case of an individual holding both a DIN and a DPIN, the DPIN will stand cancelled, and the DIN will be sufficient for appointment as designated partner under the LLP Act.⁸⁴ Designated partners, similar to a nominated director of a company, are those partners who are responsible for ensuring adherence and compliance with the LLP Act and the LLP Rules.⁸⁵ They are personally liable for any liability imposed on the LLP for contravening the LLP Act and hence such directors can only be individuals and not a body corporate.⁸⁶

An eligible person may be admitted as a partner in the LLP by subscribing his/her name in the incorporation document or in accordance with the LLP agreement.⁸⁷ Thus, the LLP Act gives the LLP independence to determine the criteria for admitting a new partner. The contribution by a partner, which is mandated to be accounted for in the books of the LLP can either be in the form of cash or kind, in accordance with the LLP agreement.⁸⁸ The latter type of contribution may consist of movable or immovable tangibles; intangible property like patents, trademarks; contract of services or any other benefits.⁸⁹

The difference between a company and an LLP primarily lies in the regulation of its internal affairs. The internal management of a company is governed by statute, primarily the Companies Act, 1956 whereas an LLP is regulated by a contractual agreement similar to a partnership agreement.⁹⁰ This makes an LLP the most appropriate business vehicle for small and medium sized businesses or a professional service based business venture. The relation-

⁸¹ *Id.*, §7(6).

⁸² Limited Liability Partnership Rules, 2009 (Amendment) Rules, 2011, Rule 2 available at [http://www.llp.Gov.in/files/draft%20notification%20for%20DIN%20&%20DPIN%20Rules%20\(amended\).pdf](http://www.llp.Gov.in/files/draft%20notification%20for%20DIN%20&%20DPIN%20Rules%20(amended).pdf) (Last visited on December 26, 2011).

⁸³ *Id.*, Rule 3.

⁸⁴ *Id.*

⁸⁵ Vishal Shah, *Provisions of the LLP Relating to Partners and Designated Partners*, 6 INCOME TAX REV. Vol. XXXV 35 (September 2009), 39.

⁸⁶ *Id.*

⁸⁷ LLP Act, 2008, §22.

⁸⁸ LLP Act, 2008, §§42 and 43.

⁸⁹ Shah, *supra* note 85, 39.

⁹⁰ See Kranti Prakash Sai, *Limited Liability Partnerships in India: A General Analysis*, April 10, 2010 available at <http://ssrn.com/abstract=1587770> (Last visited on December 26, 2011); Amit Kumar Kashyap & Deepak Kashyap, *Limited Liability Partnership as Advantage to Small Business: Indian Scenario* (National Seminar on Emerging Issues in Commerce and Management), February 5, 6 2010 available at <http://ssrn.com/abstract=1545766> (Last visited on December 26, 2011).

ships between the partners in an LLP are governed by the LLP agreement, which, like the articles and memorandum of a company, must be filed with the Registrar of Companies. This agreement regulates the rights and duties of the partner and the LLP.⁹¹ It may contain provisions on the right of a partner to transfer his interest either wholly or in part.⁹² Unlike a partnership such transfer does not automatically effectuate the dissolution of the LLP. The non-economic rights of the partner, comprising management rights or access to information on the LLP are, however, non-transferable.⁹³ Therefore, the mutually agreed upon LLP agreement lends greater flexibility to an LLP entailing fewer statutory regulations in comparison to a registered company. The LLP Act, however, also envisages circumstances under which an LLP may be formed in the absence of an LLP agreement. The rights and duties in such cases are in accordance with the First Schedule of the LLP Act,⁹⁴ which has placed reliance on the principles of equity and justice.

By virtue of §26 of the LLP Act, every partner becomes an agent of the LLP but not of the other partners. This provision is perhaps the most striking feature of the Indian law on LLP, distinguishing it from a partnership, wherein a partner is an agent of the firm and also other partners for the purpose of the business of the firm.⁹⁵ In a partnership, every partner is jointly and severally personally liable for all the acts of the partnership.⁹⁶ The unlimited liability of partners remains a primary cause of concern for constituting a business enterprise as a partnership, especially when the possibilities of the business growing in size and incorporating different professions and activities are high. The most advantageous aspect of forming an LLP over a partnership is that in an LLP, the partner's personal assets will not be at risk in the event of financial disasters arising out of business losses and errors or negligence of another partner.⁹⁷

Any act of a partner done in the normal course of business or with the authority of the LLP is binding on the LLP, including any wrongful act or omission.⁹⁸ Any liability of the LLP, arising as a result of such act remains an obligation on the LLP itself and has to be met out of the assets of the LLP.⁹⁹ A partner is liable to the extent of his or her share in the LLP. The liability of the LLP does not, however, extend to situations where the partner lacks authority

⁹¹ LLP Act, 2008, §23.

⁹² *Id.*, §42.

⁹³ *Id.*

⁹⁴ LLP Act, 2008, §23(4).

⁹⁵ Indian Partnership Act, 1932, §18; *See also* REFERENCER ON THE LIMITED LIABILITY PARTNERSHIP BILL, 2006, *supra* note 75, 38.

⁹⁶ Income Tax Officer (III), Circle-I Salem v. Arunagiri Chettiar, (1996) 9 SCC 33; Ashutosh v. State of Rajasthan, (2005) 7 SCC 308.

⁹⁷ REFERENCER ON THE LIMITED LIABILITY PARTNERSHIP BILL, 2006, *supra* note 75, 38.

⁹⁸ LLP Act, 2008, §27(2).

⁹⁹ *Id.*, §§27(3) and (4); *See also* Shah, *supra* note 85, 39.

to act on behalf of the LLP and the third party with whom the partner is dealing knows that he has no authority, or does not know or believe him to be a partner of the LLP.¹⁰⁰ In such circumstances, the liability of the partners is not limited to their contribution to or interest in the LLP, but is the personal liability of the partner. The other partners, however, are not personally liable.¹⁰¹ In case of any fraudulent activity, the liability of the partner who acted with intent to defraud and of the LLP, if the act was committed with the knowledge and authority of the LLP, is unlimited.¹⁰²

To ensure greater transparency and to facilitate an investigation into the suspicious activities of an LLP, the LLP Act provides for whistle blowing. The interests of a partner will be legally protected if they provide useful information during an investigation that is relevant for the disposal of that proceeding.¹⁰³ A partner is also empowered to seek an investigation into the affairs of the LLP by an application to the National Company Law Tribunal, but an investigation is conducted only in the circumstance that the application is moved by at least one-fifth of the total number of partners.¹⁰⁴ The strength of partners mandatorily required for initiating an investigation procedure is irrespective of the percentage of contribution of the partners or their share in the profits. This ensures an efficient redressal mechanism for minority partners in the event of prejudice or mismanagement by the majority stakeholders' group.¹⁰⁵

IV. TAX ON LLPS

The taxation concerns of a company or of a partnership are not addressed in the Companies Act, 1956 or the Indian Partnership Act, 1932 respectively. They are dealt with by tax legislation. Therefore, it was inevitable that the LLP Act would be silent on the issue of tax implications for an LLP. The Finance Act, 2010, which has come into effect from the assessment year 2010-2011, incorporates the mechanism for taxation of LLPs by amending the Income Tax Act, 1961. Subsequently the Ministry of Corporate Affairs has released a press note on the taxation of LLP.

There are two popular options for taxation used in various foreign jurisdictions that provide for LLPs. The first is the practice, as is seen in the French LLP model, of treating an LLP as a fiscally transparent entity and taxing merely the income of the partners and not of the transparent entity.¹⁰⁶ The alternative to this, based on the UK and Singapore LLP models, is to ac-

¹⁰⁰ LLP Act, 2008, §27(1).

¹⁰¹ *Id.*, §28(2).

¹⁰² *See* LLP Act, 2008, §30.

¹⁰³ LLP Act, 2008, §31.

¹⁰⁴ *Id.*, §43.

¹⁰⁵ Shah, *supra* note 85, 39.

¹⁰⁶ Sachdeva and Mahajan, *supra* note 42, 8.

cord similar treatment to an LLP as a partnership. India has adopted the latter practice. Under the amended §140 of the Income Tax Act, 1961, the designated partner has to sign the return of the income and due to some unavoidable reasons maybe signed by any other partner. Consequent to the Finance Act, 2010 the words 'partner', 'firm' and 'partnership' under §2(23) of the Income Tax Act, 1961 have been amended accordingly to bring LLPs within its ambit.

An LLP will be considered an equivalent of a general partnership for taxation purposes and will reap all the tax benefits that are available to a partnership.¹⁰⁷ Income tax will be levied on the LLP itself and the profits from the LLP which the partners obtain will not be computed for their personal income as it will be considered as 'business income' which is within the scope of a 'deduction' for computing income.¹⁰⁸ In the event of failure to comply with §184 of the LLP Act, the remuneration paid to the partners will not be allowed as deductions on their personal income.¹⁰⁹ Further, any contribution of capital assets by a partner to his LLP or distribution of such assets by the LLP to any partner, will be considered to be income of the partner and LLP respectively, and will be subject to income tax.¹¹⁰ §40(b) of the Income Tax Act, which provides for restrictions on payment of interest and remuneration to partners, has been modified now to uniformly apply to professional and non-professional firms. LLPs are beneficiaries of the modification, thus making them an attractive business option for professionals forming an association.¹¹¹

While an LLP is generally treated as an equivalent of a general partnership for taxation purposes, the Union Budget 2011-12 has announced the levy of Alternate Minimum Taxes ('AMT') on LLPs similar to the Minimum Alternate Tax ('MAT') imposed on companies.¹¹² In this regard, the Union budget has proposed to introduce a new Chapter XII-BA under the Income Tax Act, 1961 providing for the levy of AMT at 18.5 percent of the adjusted total income of LLPs.¹¹³ Thus the tax base for LLPs would be the adjusted total income and not book profits as in the case of companies. Although the introduction of the AMT on LLPs may be perceived as a disadvantage to the LLP business form, the LLP nevertheless remains an attractive business form due to its inherent flexible structure along with the exemption from dividend distribution tax.

The taxation scheme for LLPs may, however, deter prospective foreign investors given that investment in LLPs may lead to double taxation—first, at the level of the LLP in India and second, at the level of profits for the

¹⁰⁷ Income Tax Act, 1961, §184, as amended by Finance Act, 2010.

¹⁰⁸ Income Tax Act, 1961, §10(2A) and 28(v).

¹⁰⁹ Paras Savla, *LLP and Partnership*, 35(4) INCOME TAX REV. 38, 39 (2009).

¹¹⁰ Income Tax Act, 1961, §§45(3) and (4).

¹¹¹ *Id.*

¹¹² Finance Bill 2011, Cl. 18, available at <http://indiabudget.nic.in/ub2011-12/fb/bill131.pdf> (Last visited on December 26, 2011).

¹¹³ *Id.*

investor in the foreign jurisdiction.¹¹⁴ It may, however, be of convenience to an Indian LLP doing business abroad depending on the legislation prevailing in the foreign jurisdiction, as the LLP may be treated as fiscally non-transparent and taxed as a separate entity. Hence, it will avail the benefits of tax credit. If the partners, and not the LLP, are treated as beneficiaries of income in the foreign state, the tax credit cannot be utilised.¹¹⁵ Even the double taxation avoidance agreements that India has signed with some States have not provided a suitable solution. At this point, it is interesting to note that in the US adopts a truly unique system that, in accordance with the internal structure of the LLP, gives the option of taxation either at the level of the LLP or at the level of the partners.¹¹⁶ This enables an LLP to decide its structure depending on the laws of the countries where the LLP is investing and doing business so as to avail of the tax credit advantage. Had India adopted such a mechanism, the problem of double taxation could have been effectively put to rest.

V. IMPACT OF LLP ACT ON ADVOCATES

A. MAXIMUM NUMBER OF PARTNERS

One of the primary considerations advanced by the Naresh Chandra Committee in its 2003 Report for the introduction of LLPs in India was with regard to Indian professional firms like legal and accounting firms. It was emphasized that since the Indian Partnership Act, 1932 only allowed for a maximum of twenty persons in a partnership, the emergence of LLPs would overcome this restriction and would thereby ensure the unhindered growth of Indian professional firms. It is, however, pertinent to note that the restriction on the maximum number of members of a partnership has been imposed by the Companies Act, 1956 and not by the 1932 Act. Although the LLP Act does not expressly provide for the limit on the maximum number of members,¹¹⁷ it cannot be legally concluded that there is no limit on the membership in view of §11(2) of the Companies Act, which provides:

“No company, association or partnership consisting of more than twenty persons shall be formed for the purpose of carrying on any other business that has for its object the acquisition of gain by the company, association or partnership or by the individual members thereof, unless it is registered as a

¹¹⁴ Sachdeva and Mahajan, *supra* note 42, 8; Pai, *supra* note 65, 61.

¹¹⁵ *See id.* (for a detailed discussion on the contingencies which may arise in different jurisdiction).

¹¹⁶ *See* Uniform Limited Liability Partnership Amendments to the Revised Uniform Partnership Act 1996.

¹¹⁷ *See* Ministry of Corporate Affairs, Government of India, *FAQ on LLP*, available at <http://www.llp.gov.in/FAQ.htm> (Last visited on December 26, 2011).

company under this Act, or is formed in pursuance of some other Indian law.”

The purpose of this provision was to prevent the formation of large trading undertakings that were not companies,¹¹⁸ and to thereby promote the ‘company’ as a form of business organization. Thus, according to the Companies Act, in order for a partnership to consist of more than twenty members, it would have to be registered as a company under it, or should be formed ‘in pursuance of some other Indian law’.

At present, the LLP Act, 2008 does not expressly provide a limit on the maximum number of members.¹¹⁹ Further, it only excludes the application of the Indian Partnership Act, 1932,¹²⁰ and this exclusion would not allow an LLP to have more than twenty persons, as no exception has been made to §11 of the Companies Act, which is the relevant provision regarding this rule.

§3(1) of the LLP Act provides that an LLP is a ‘body corporate’. §2(d) of the LLP Act further provides that a “body corporate” means a company as defined in §3 of the Companies Act. If, however, this were to be interpreted as meaning that an LLP in India is conferred the status of a ‘company’; this would also mean that the LLP would be subject to all the restrictions and requirements imposed by the Companies Act, which is not the intended purpose of conferment of legal recognition on LLPs.¹²¹

It may, however, be argued that the LLP Act does, in fact, comply with §11 of the Companies Act, as it satisfies the requirement of “in pursuance of some other Indian law” under §11 of the Companies Act.¹²² While this may be true, the argument should then be equally applicable to the Indian Partnership Act, 1932. Since, the argument clearly does not hold for partnerships, however, it cannot hold for LLPs either. Further, §11 of the Companies Act does not specify whether ‘some other Indian law’ should have been in force before or after the coming into force of the Companies Act.

Thus, in light of the above, one of the primary reasons for the introduction of LLPs in India- which was to overcome the restriction on the maximum number of persons in a partnership firm and thereby enable the growth of legal and accounting forms, has remained unfulfilled.

¹¹⁸ A. RAMAIA, GUIDE TO THE COMPANIES ACT, Part-I 336 (Chandrachud & Dugar eds., 2006).

¹¹⁹ LLP Act, 2008, §6(1) (which only provides a minimum of two members to form a LLP).

¹²⁰ Indian Partnership Act, 1932, §4; See Ministry of Corporate Affairs, Government of India, *Need for the New Corporate Form- LLP*, available at <http://www.llp.gov.in/aboutllp.htm> (Last visited on December 26, 2011).

¹²¹ See Sachdeva & Sachdeva, *supra* note 2, 13.

¹²² *Id.*

B. REPRESENTATION BY A LLP IN COURT

It can be implied from provisions of the Advocates Act, 1961 that the right to practice is a right capable of being conferred upon and exercised only by natural persons.¹²³ Since an LLP is a body corporate with a separate legal personality,¹²⁴ a question arises as to whether an LLP is allowed to 'practice' law and represent in courts cases.

Rule 2 of Chapter III of Part VI of the Bar Council of India Rules, however, provides that "an advocate shall not enter into a partnership or any other arrangement for sharing remuneration with any person or legal practitioner who is not an advocate".¹²⁵ While this Rule prohibits a partnership or any other arrangement between an advocate and a non-advocate, it does not expressly prohibit an arrangement between two or more advocates. Thus, by relying on this argument, advocates can form an LLP and be permitted to 'practice' law and represent in courts.¹²⁶

VI. CONCLUSION

This paper has endeavoured to provide a thorough analysis of a new concept called the limited liability partnership. First and foremost, it has traced the evolutionary history of the LLP, from its creation in Texas and its spread to other jurisdictions. As it gained worldwide acceptance, the concept of LLPs widened and envisaged several new advantages for partners within its ambit. During the drafting of the Indian legislation for LLPs, the main source of inspiration was the English and Singaporean concept of LLP. Their concept of LLP is distinctly separate from the Texan model. Prior to the passing of the LLP Act, there were several debates by various committees; a concept paper was also floated by the Government. It is evident that there was much deliberation directed towards achieving the most viable form of LLPs.

The Indian LLP, a creation of the LLP Act, has successfully attained a middle path between a partnership and a company. The LLP Act has provisions starting from the incorporation of, or conversion to, an LLP, up to the winding up of the LLP. Detailed emphasis has been given to the role of partners. Their rights and liabilities have been elucidated. Subsequent to the passing of the Finance Act, 2010, the taxation of an LLP has been clarified to be similar to the taxation of a partnership. Moreover, the Securities and Exchange

¹²³ The Advocates Act, 1961, §§24, 29 & 33 (which lay down conditions such as citizenship of India, minimum age of twenty-one years, etc., which cannot be met by a non-natural person).

¹²⁴ LLP Act, 2008 §3(1).

¹²⁵ Bar Council of India Rules- Part VI: Rules Governing Advocates, available at <http://lawmin.nic.in/la/subord/bcipart6.htm#chapter3> (Last visited on December 26, 2011).

¹²⁶ *Supra* note 5.

Board of India through its circular dated July 11, 2011 has stated that LLPs are similar to limited liability companies and partnership firms, and are thus eligible to be admitted as members of stock exchanges.¹²⁷ This is subject to the LLP's compliance with the conditions laid down in Rule 8(4A) of the Securities Contract Regulation Rules, 1957, as far as it may apply to LLPs.¹²⁸

In the course of this paper, an attempt has been made to show that in several ways, an LLP serves as convenient business machinery for medium and small size organizations that are constrained by several limitations like finances. Therefore, the primary incentives to form an LLP are that, unlike a partnership, in the normal course of business there is no personal liability of partners; and unlike a company, an LLP is taxed only at one level as long as the partners are Indians. Hence, as compared to a company, an LLP will not require a large sum of the income to be deposited to the Government.¹²⁹ The option that such concerns had, prior to the coming into existence of the LLP Act, was to incorporate a private limited company. An LLP, however, involves much less financial and regulatory considerations, in comparison to a private company. Moreover, with the gradual opening up of professional services to global actors, LLPs seem to be an attractive prospective for professional service providing business concerns. As of December 20, 2011, almost 7,337 LLPs have been registered in India.¹³⁰

As has been elucidated with the example of an association of lawyers, certain conflicting situations arise as a result of provisions under other pieces of legislation. These factors have not been considered in the drafting of the Act as is apparent from its provisions. Further, certain confusions regarding the exact nature and identity of an LLP continue to persist. For example, in May 2011, the Government approved foreign direct investment ('FDI') in LLPs. A conservative approach has, however, been taken by allowing FDI only in sectors where 100 percent FDI under the automatic route is allowed.¹³¹ Again, LLPs with FDI will be unable to make downward investment.¹³² In fact, there are several other apprehensions caused by the LLP Act for foreign investors including the possibility of double taxation. Some authors have also been critical of the provisions for disclosure of financial information, possibility of detailed investigation for minor irregularities and heavy penalties imposed for offences under the LLP Act. These features would have been absent in a general partnership. This paper, however, argues that in a merger of two kinds of

¹²⁷ Circular available at <http://www.sebi.gov.in/circulars/2011/cirmirsd122011.pdf> (Last visited on December 26, 2011).

¹²⁸ *Id.*

¹²⁹ Sachdeva & Mahajan, *supra* note 42, 8.

¹³⁰ As per information provided on the official LLP website of the Ministry of Corporate Affairs: <http://www.llp.gov.in/> (Last visited on December 30, 2011).

¹³¹ See *Foreign Direct Investment in Limited Liability Partnerships*, available at http://www.ll-online.in/foreign_investment_in_llp.php (Last visited on December 23, 2011).

¹³² *Id.*

organizations, it is only realistic to believe that all the luxuries available to one of the original forms will not be at the disposal of the hybrid form. It is inevitable that some advantages will have to be sacrificed to fill the vacuum between a company and a partnership. Thus, while some more fine-tuning of the LLP Act is required to mitigate the above-discussed conflicting situations, the LLP Act along with all the related recent legislative enactments, has genuinely been a boon to Indian business interests.

