

# LIMITED LIABILITY PARTNERSHIP (LLP)

Salient Features of LLP Act  
LLP Agreement – drafting  
& interpretations  
CS Anant Amdekar

## LLP Act, 2008 & Rules 2009 with relevant amendments

- **Highlights:**

- Provisions are based on Nareshchandra Committee & J J Irani Committee recommendations.
- It is a separate legal entity – it is a body corporate.
- Members from different profession can form LLP.

May 17, 2017 11:01 AM  
Even body corporate can be a partner.

# LLP Act, 2008 & Rules 2009 with

- **Highlights:**
  - relevant amendments
- One out of minimum two partners – must be resident Indian.
- Designated partner must have DIN.
- Subscribers to Incorporation documents will be Partners.
- In case of fraud – liability of that partner can be unlimited.

# LLP Act, 2008 & Rules 2009 with

- **Highlights:** relevant amendments
- Contribution from Partners – can be tangible, intangible, movable, immovable...
- Filing of Statements of Accounts and Solvency – within 6 months.
- Audit mandatory – if contribution more than 25.00 lacs or turnover is more than 40.00 lacs – Welcome prov. In line with developed countries – even Companies should have similar prov.

# LLP Act, 2008 & Rules 2009 with

- **Highlights:** relevant amendments
- Right to Profit and distribution is transferable.
  - In companies it is associated with shareholding, so gets tagged along. And invariably management control also likely to get transferred.
- Mere transfer of partners' share will not entitle the transferee/assignee to participate in the management of LLP. – It requires express prov. In the Partnership Deed.

# LLP Act, 2008 & Rules 2009 with

- **Highlights: Foreign LLP**
  - **relevant amendments**
  - Within 30 days of establishment of place of business in India, file form 27 with relevant attachments.
  - If FLLP is a part of Commonwealth Nations then documents to be certified by official, Notary of the country of origin.
  - If FLLP is a party who is signatory to Heaque Treaty – then it has to follow rules of country of origin

# LLP Act, 2008 & Rules 2009 with

- **Highlights:** relevant amendments
- LLP Agreement is mandatory – if not made provisions of schedule 1 will be applicable.
- Provisions of C A 2013 by notification could be made applicable to LLP. – especially administrative and reporting provisions.
- Designated Partner need not be Partner of LLP.

# Some Points to ponder upon

- In UK LLP is pass thru' entity – it means profit could be distributed to partners and then it is taxed in the hands of partners.
- In India LLP is subject to Income Tax and MAT.
- In China LLP is known as 'Special General Partnership' – LLP form is allowed only to knowledge based professions and technical services industries.



# Some Points to ponder upon

- In Germany also it is pass thru' entity.
- It does not enjoy separate co. status but gets some benefits like co. can sue and can be sued, can own property, can act in its own name.
- In UK LLP partners have collective responsibility but not responsible for each other's fraudulent activities.

# Some Points to ponder upon

- In some states of US LLP can be formed only for professional services – Collapse of Real Estate and energy sector is the trigger – where lawyers were made responsible for their opinions.
- A member of LLP should not be regarded as employee of LLP unless agreement overtly provides for the same. **Clyde & Co. v/s Bates van.**
- **Aurther Anderson LLP v/s US**
- **Instructions to employees to destroy the documents whether fraudulent.**

# LLP Agreement – Important Clauses

- Date, parties (which can include body corporate),
- Whereas – narrative/preamble part – important from legal interpretations point of view – it helps court to interpret the minds of the parties and their intentions.
- Key terms to be defined – designated partners, partners, contribution, applicability of Schedule 1

# LLP Agreement – Important Clauses – Cont.....

- Operative Part –
  - Name of LLP – as approved by MCA
  - Name of the partners & designated Partners.
  - Contribution – in cash, tangible, intangible, movable, immovable form – it has to be valued by CA, ICW or Registered Valuer. **Any increase or decrease should be with the permission of all the partners.**

May 27, 2017 CS-Amit Anand & Co. LLP  
Common Seal – with sign of any designated

# LLP Agreement – Important Clauses – Cont.....

- **Sharing Of Profits –**

- in the ratio of contributions OR

- in the ratio of voting rights OR

- in the ratio as may be determined by majority of Partners or all the Partners.

- **Live case for discussion – B2B Portal – Company forming LLP as SPV – Contribution in the form of**

# LLP Agreement – Important Clauses – Cont.....

- **Voting Rights –**

- as specified in the agreement OR
- in the ratio of respective contribution OR
- in the ratio of respective profit sharing OR
- such ratio as may be determined by majority of partners OR
- such ratio as may be determined by all the partners.

# LLP Agreement – Important Clauses – Cont.....

- Main Business – check for respective councils  
– e.g. Council of Architecture does not allow,  
CA,CS allow.
- Ancillary Business – it can be described by way  
of Schedule
- Other Business – it can be described by way of  
Schedule. This clause requires alignment in line with C

# LLP Agreement – Important Clauses – Cont.....

- **Profit Sharing Ratio –**
  - in the proportion of their contribution OR
  - in the ratio of their voting rights OR
  - in such proportion as may be agreed upon in the agreement. OR
  - such ratio as may determined by majority of partners OR
  - such ratio as may be decided by all the partners.



# LLP Agreement – Important Clauses – Cont.....

- **Partners – Admission** – either of the following conditions –
  - consent from all the existing partners,
  - consent from majority of partners,
  - consent from specified no. of partners,
  - consent from such partners who have contributed specified amount in the contribution.
  - such no of partners carrying voting rights of specified percentage.

# LLP Agreement – Important Clauses – Cont.....

- Resignation/Retirement –
  - Notice in writing of 30 days of his intention or such early date as may be agreed to by existing partners.
  - on the effective date accounts are taken as closed as settlement is done, any recovery from outgoing partner within 3 months.
  - Business of LLP is continued by remaining/continuing partners.

# LLP Agreement – Important Clauses – Cont.....

- Death –
  - On the death of one of the parties, other parties agree to induct spouse within 30 days if not children in the same proportion.
- Removal –
  - can not be removed by other partners unless he is found guilty of fraudulent activities OR by giving 30 days notice with an opportunity

# LLP Agreement – Important Clauses – Cont.....

- Rights of a Partner –
  - In all the assets and properties in the proportion of their contribution.
  - continue newly undertaken business without using the name of LLP.
  - shall have access to books of accounts, records, documents.

# LLP Agreement – Important Clauses – Cont.....

- **Duties –**
  - account for any benefit, profit without consent of other partners, at the cost of other partners.
  - to keep other partners indemnified against any loss suffered by other partners because of his fraudulent activities.

# LLP Agreement – Important Clauses – Cont.....

- **Meetings –**

- one or more meetings at such time at such intervals as may be decided by all, majority or such no of partners specified in the agreement.

- **Proxy –**

- similar provisions like C A 2013

- **Quorum –**

- Two partners present in person. Other provisions are same like C A 2013

# LLP Agreement – Important Clauses – Cont.....

- Designated Partner – **Appointment**
  - Partners at the time of incorporation shall ordinarily act as designated partners.
  - they can appoint other member, who may not be a partner as designated partner.
  - at any time it should not be less than two.
- **Resignation/Removal –**
  - by notice in writing of 30 days. Such vacancy to be filled in within 2 months.

# LLP Agreement – Important Clauses – Cont.....

- **Transfer or assignment of right/interest –**
  - has to offer to transfer, assign his right/interest to other continuing partners by giving 15 days notice.
  - if no communication, then can transfer to any person in the market by execution of agreement/deed and intimate to existing partners within 30 days.



# LLP Agreement – Important Clauses – Cont.....

- Borrowing Powers –
- Appointment of Auditors –
- Powers of Designated Partners –
  - same like that under C A 2013 of MD.

# LLP Agreement – Important Clauses – Cont.....

- Accounting Year –
- Books of Account –
- Indemnity – for any personal liability incurred by the partner.

# LLP Agreement – Important Clauses – Cont.....

- Opening of Bank Accounts –
- Dispute settlement – Arbitration – **only if provided in the agreement.**
- Winding –up -

# Amendments in last three Years

- LLP (Amendment) Rules, 2015 – vide GSR No. 786(E) dt. 15.10.2015 – effective from 19.10.2015
  - Rule 33 – Conversion of Firm into LLP – intimation to MCA in Form 14 – within 15 days.
  - Rule 39(3) – conversion of Private Co. into LLP – Omitted.
  - Rule 40 (3) – conversion of Unlisted Public Co. into LLP – Omitted

# Amendments in last three Years – Cont....

- LLP(Amendment) Rules, 2016 – vide GSR No. 418(E) – dt. 13.04.2016
  - Form 14 – conversion of Firm into LLP
- LLP (Second Amendment) Rules, 2016 – vide GSR 593 (E) dt. 10.06.2016
  - Changes in disclosures – Forms – 2,3,4 & 11.

# Amendments in last three Years – Cont....

- LLP (Amendment) Rules, 2017 – vide GSR No. 470(E) dt. 16.05.2017 – effective 20.05.2017
- Rule 37 – Process for Striking Off Name from Register
- Forms 8 & 11 – for filing of Overdue Returns.
- Live case for discussion – AHA – Loan from Partner – whether to add in contribution or write Off. – its repercussions under different laws.

# Food for Thought

- Pawan Coal Co. LLP v/s State of UP –
  - 27.09.2014 – tender documents were submitted – by and in the name of P’Ship Firm.
  - 29.09.2014 – P’Ship Firm got converted into LLP. (Registration date)
  - 10.10. 2014 – Agreement was executed by Partners of P’Ship Firm and not in the name of LLP - With same Partners.

# Food for Thought – Cont.....

- Issues arose in the dispute were –
  - Agreement was executed by non-existent entity – whether valid?
  - Whether Partners of LLP have such right to enter into Agreement?
  - It was argued as inadvertent & bona-fide mistake of the Partners – whether tenable?
  - Agreement was executed at the insistence of UPDCF – Contracting Party – whether amounts



# Food for Thought – Cont.....

- Clyde & Co. v/s Bates – Whether of Members are Workers – for the purpose of Labour Legislations? UK Supreme Court was of the opinion that -
  - Yes – more for protection and Whistle Blowing
  - For rest of the consequences - it depends on the wordings of the LLP Agreement.
- Chiron Behring GmbH & Co. - incorporated as LLP in Germany.

# Food for Thought – Cont.....

- FDI in LLP – fall under Automatic Route subject to Negative list and Sectoral Cap.
- FIPB – authority is dissolved.
- FLLP – is not preferred choice due different countries having different restrictions for LLP form of organization e.g whether pass thru or not? In India it is not pass thru'

# Keep in touch

- CS Anant Amdekar –
- Mobile No. – 09820291488.
- Email ID - anantamr@rediffmail.com
- - anant.amdekar@gmail.com

THANK YOU