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A Study of Limited Liability Partnership

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Abstract: ***There are many types of business forms in business world. Choosing the form of business organization is an important decision because it can be critical to the success or the failure of the business. Each form of business organization has its advantages and disadvantages form of business organization are directly related to the ownership of business. Ownership is a legal concept that decides the rights and liabilities of owner. The purpose of this paper is to know about limited liability partnership which is an emerging form of business. This paper covers brief knowledge of various form of business and a study of limited liability partnership. In this paper we will know that what is limited liability partnership, what are the advantages and disadvantages of limited liability partnership. How an LLP incorporated and how LLP dissolves.***

Keywords: Partnership firm, Hindu undivided family, joint stock company, limited liability partnership LLP

1. Introduction

An LLP is a hybrid form of organization having feature of a partnership firm under the Indian partnership act 1932 and a company under the companies act 2013, however the Indian partnership act will not be applicable to LLPs and the LLPs are administered by the registrar of companies. An LLP is a newer form of business partnership where all of the owners have limited personal liability for the financial obligations of the business.

2. Objective of Study

- To know about various forms of business organization
- To study limited liability partnership

3. Research Methodology

Paper is based an secondary data which are collected from books and websites

4. Main Content

Limited liability partnership is an emerging form of business before studying of LLP we need to know various forms of business organization

1) Sole proprietorship

Sole proprietorship is a popular form of business organization and is the most suitable form for all business especially in their initial year of operations. Sole proprietorship refers to a form of business organization which is owned managed and controlled by an individual who is the recipient of all profits and bearer of all risks. The word sole stands for only and proprietorship is for owner Hence a sole proprietorship is the form of organization which operates by only one person. It is easy to form and closure. There is no separate legal entity. Liability of owner is unlimited. All rights of decision are in the hands of owner.

2) Partnership firm

A firm established between two or more partners with the goal of earning profit is called partnership firm. In India all the aspects and functions of partnership firm are administered under The Indian partnership act 1932 In partnership firm liability of partner is unlimited. All the partners are liable for the payment of the debt even if they have to liquidate their personal assets. In firm partners have a legal agreement between all the partner. There is no legal separate entity. Partners are agent of the firm minimum number of partners needed to start is two. According to section 464 of the company act 2013 maximum numbers of partners in a partnership firm can be 100, subject the numbers prescribed by the central government

3) Hindu Undivided family (HUF)

The relation of partnership arises from an agreement while the relation of an HUF arises from status. The HUF is assessed to income tax as a separate independent unit According to Hindu law a Hindu undivided family consist of all male person lineally descended from a common ancestor except those who have separated for the partition assets and includes their wives and unmarried daughters and also a stranger who has been adopted by the family HUF is also easy to form and dissolve The head of family has all the power to sign the relevant documents on behalf of other members in family.

4) Cooperative Society

Co-operative society is a voluntary association of persons who join together with the motive of welfare of the members They are driven their economic interest in the face of possible exploitation at the hands of middle men obsessed with the desire to earn greater profit the cooperative society is compulsorily required to be registered under the cooperative societies Act 1912 co operative society has limited liability. The power to take decision lies in the hands of elected managing committee. Cooperative society through its purpose lays emphasis on the values mutual help and welfare

5) Joint Stock company

A company is an association of persons formed for carrying out business activities and has a legal status independent of its members A company can be described as an artificial person having separate legal entity, perpetual succession legal entity, perpetual succession and a common seal. The company form of organization is governed by The company Act 2013 The share holders are the owner of the company while the board of directors in the chief managing body elected by the shareholders. The shareholders are liable to the extent of the amount unpaid on the shares held by them Hence the liability of shareholder are limited.

Limited liability Partnership LLP

A limited Liability partnership is a body corporate form and incorporated under the limited liability partnership act 2008 Act was commenced on 1 April 2009 with 81 Sections 14 chapters and 41 schedules.

For a long time a need has been felt to provide for a business format that would combine the flexibility of partnership firm and the advantages of limited liability of a private limited company a law compliance cost. The limitation of partnership firm and the rigidity of the companies has led to the birth of what we call it as LLP.LLP is an alternative corporate business vehicle that provides the benefit of limited liability of a company but allows its members the flexibility of organization their internal management on the basis of mutually arrived agreement as is the case in partnership firm. This format would be useful for small and medium enterprises.

Nature of LLP

- **LLP to be body corporate**: A LLP is a body corporate formed and incorporated under this LLP Act 2008.
- **Non Applicability of Indian partnership Act 1932** :- The Provisions of Indian partnership Act 1932 shall not apply to an LLP.
- **Partners –** Any individual or body corporate may be partner in LLP. A person who has been found unsound mind insolvent shall not be capable becoming a partner of LLP.
- **Number of Partners:** Every LLP shall have at least two partners and there is no limit of maximum number of partners.
- **Separate legal entity every:** LLP has separate legal entity. And relation between firm and partners are not to be like agent and employer.
- **Designated partners-** Every LLP shall have at least two designated partners who are individual and at least one of them shall be a resident in India.
- **Use of word LLP** – Every LLP shall strictly use the word LLP after their firms name.

Incorporation of LLP

For an LLP to be incorporated two or more person associated for carrying an a lawful business with a view to profit shall be subscribe their names to an incorporation document shall be like in such manner and with such feel as may be prescribed with the registrar of the sate in which the registered office of LLP situated Incorporation document shall be in a form as may be prescribed name address of LLP and partner details.

Steps of Incorporation of LLP

- **Name reservation**: The first step of incorporation of LLP is reservation of name of LLP .Applicant has to file e form 1 for ascertaining availability and reservation of name of LLP.
- **Incorporate LLP –** After reserving a name user has to file e-form-2 for incorporation a new LLP e-form 2 contains the details of LLP proposed to be incorporated, designated partners details and consent of designated partners to act as partners.
- **LLP Agreement –** Execution of LLP agreement is mandatory as per section 23 of the act. LLP agreement is required to be liked with the registrar in e-form-3 within 30 days of incorporation of LLP.

Advantages of LLP

- There is no minimum capital requirement in LLP An LLP can be formed with the least possible capital.
- An LLP requires minimum two partners while there is no limitation for maximum number of partners.
- There is no requirement of compulsory audit An LLP is required to get a tax audit done only in case of the contribution of LLP exceeds, Rs 25 lacs or the annual turnover of the LLP exceeds Rs 40 lacs
- The cost of registering LLP is low as compared to the cost of incorporating a company.
- LLP protects the member personal assets frame the liability of business.
- LLP is more flexible as compare to company to organize internal structure.

Disadvantages of LLP

- An LLP can be structured in such a way that and partner has more rights than another.
- An LLPs compliances are minimal but if you don't complete them you could end up Paying more in fines than you would with a private limited company.
- LLP cannot raise money from the public.
- Venture capital firm generally prefer not to invest in LLP.

Tax on LLP

A. Income Tax

- Tax Rate: LLP is liable to pay tax at the rate of 30% on its total income.
- Surcharge: The amounts of income tax shall be further in governed by a surcharge at the rate of 10% of such tax when total income exceeds one crore rupees. However the surcharge shall be subject to marginal relief the total amount payable as income tax and surcharge shall not exceed total amount payable as income tax on total income tax as total income of one crores rupees by more than the amount of income tax exceed one crore rupees.
- Health and education cess :-The amount of income tax and surcharge shall be further increased by education cess and secondary and higher education cess calculated at the rate 4% of such income tax and surcharge.

B. Alternated minimum Tax

Tax payable by LLP cannot be less than 18.5% of adjusted total income.

Tax can be paid by physical mode and e-payment mode e-payment mode of taxes is mandatory for LLP who is liable to get its accounts audited under section 44AB of the Income tax act 1961.

Winding up an dissolution of LLP

- Winding up of LLP may be either voluntary or by the tribunal and LLP So wound up may be dissolved.
- Circumstances in which LLP may be wound up by tribunal.
- If the LLP decides that limited liability partnership be wound up by the tribunal.
- If for a period of more than six month the number of partners of the limited liability partnership is reduced two.
- If LLP is unable to pay its Debts.
- If LLP has made default in filling with the registrar the statement of account or annual report for any 5 financial year.
- If LLP has acted against the interest of sovereignty.
- If the Tribunal is of the opinion that it is just and equitable that the LLP be wound LLP.

5. Conclusion

Above study shows that there are various types of business organization. Choosing the best form is a very important for success of business LLP is helpful for small and middle organization and also for all type of business for initial years LLP is easy to form and flexible as compared to other forms of organization.LLP is recognition of the changing needs for the business in today's time.

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