



LEGAL ASPECTS OF BUSINESS ORGANIZATIONS: PARTNERSHIP AND LLP

INTRODUCTION

What are the forms of business enterprises in India?

What are the advantages and drawback of the various forms of business enterprises?



WHAT ARE THE FORMS OF BUSINESS ENTERPRISES IN INDIA?

Sole proprietorship

Partnership

Limited Liability Partnership

Company

WHAT IS SOLE PROPRIETORSHIP

An individual owned and managed business

Profit and loss has to be borne by a single person

Less legal compliance

Not suitable for running business requiring huge investment and resources

RELEVANCE OF OTHER FORMS OF BUSINESS

Business organizations which allows financial resources to be pooled

Business organizations which have a separate identity from the owners and develop goodwill of its own

A system by which the law facilitate and incentivize risk taking

WHAT IS PARTNERSHIP?

A recognised form of conducting business in India under Indian Partnership Act

- Based on agreement of members to form a partnership
- Partners pool in their resources to do a business
- Partners agree to share the profits of a business

CONT.

Example: Ram and Sam put in Rs. 10 lakhs each to start a retail business

They agreed to share the profits at 50:50 ratio and entered into a partnership agreement

They agreed to call the firm as 'R&S Associates'

They mentioned these details in an partnership agreement

CONT.

Members in the partnership are called partners

Partnership is referred to as firm

Partnership agreement/deed can contain clauses on

- Dispute resolution
- Retirement and Termination
- Non-compete clause

REGISTRATION OF PARTNERSHIP

Partnership agreement between the parties

Partnership agreement mentions the following:

- Financial contribution of parties
- Share of profit
- Nature of business
- Period for which partnership is formed

Registration

- With the Registrar of Firms in the concerned state

BENEFITS OF PARTNERSHIP FORM OF BUSINESS

A contractual relationship exist between the partners

- Disputes can be settled based on the partnership agreement

Can conduct business in the name of the firm

- Collectively the partnership is referred in the name of the firm.

CONT.

Less compliance

- As compared to a company and LLP

Collective decision making

- Based on majority decision of partners

WHEN TO GO FOR PARTNERSHIP

Good for a short- term venture

Skill based business- Skill more important than financial capital

Consultancy services, professional services (legal, architecture etc.)

DRAWBACKS OF PARTNERSHIP

Liability in a partnership is unlimited

- Joint liability of partners
- What about sleeping partner concept?

Mutual agency- Each partner act as an agent of another

- Actions of one partner could hold another partner liable



Every partner is liable, jointly with all the other partners and also severally, for all acts of the firm done while he is a partner

SITUATION

Ram and Sam put in Rs. 10 lakhs each to start a retail business

They agreed to share the profits at 50:50 ratio and entered into a partnership agreement

The partnership incurred loss of Rs. 30 lakhs

Can Ram and Sam be made personally liable for losses?

DRAWBACKS OF PARTNERSHIP

- All partners are responsible for legal compliance
- Limitation on the number of partners- Maximum of 20 partners till recently. Now capped at 100
- Limited possibilities to raise financial capital in the partnership form of business

RELEVANCE OF PARTNERSHIP AS A BUSINESS FORM

Business organizations which allows financial resources to be pooled-

- Partnership allows for financial resources to be pooled

Provides a separate identity from the owners and develop goodwill of its own

- Partially. Business could be conducted in name of the firm.

A system by which the law facilitate and incentivize risk taking

- No. Unlimited liability

LIMITED LIABILITY PARTNERSHIPS

A new form of business organisation

Introduced in 2008 by Limited Liability Partnerships (LLP) Act

Drawbacks of traditional partnership business model are plugged-out

ADVANTAGES OVER TRADITIONAL PARTNERSHIP MODEL

Partners liability limited to extent of financial contribution

- LLP is treated as a separate entity in law from the partners
- LLP will be liable to extent of its assets

No limitation on number of partners

- Restriction of 20 partners in traditional partnership model

SITUATION/EXAMPLE

Ram and Sam put in Rs. 10 lakhs each to start a retail business

They agreed to share the profits at 50:50 ratio and started a LLP

The LLP incurred loss of Rs. 30 lakhs

Can Ram and Sam be made personally liable for losses?

REGISTRATION OF LLP

Registration is mandatory as per LLP Act

LLP Agreement and name of the LLP are required

Registration have to be done with Registrar of the Company

ROC also allows for the conversion of existing format in case of traditional partnership model

COMPLIANCE REQUIREMENTS

LLP shall maintain annual accounts

Audit of the accounts is required if the contribution exceeds Rs. 25 lakh or annual turnover exceeds Rs. 40 lakh.

A statement of accounts and solvency shall be filed by every LLP with the Registrar of Companies every year

CONT.

Designated partner responsible for legal compliance in LLP

Two partners needs to hold the position of designated partner

HOW POPULAR IS THE LLP MODEL?

Growth Unlimited

Over six times. This is the growth in the number of Limited Liability Partnership, or LLPs, since 2012. The number is quite high when compared with less than two times growth in the number of companies that were incorporated during this period



FDI IN LLP

Foreign Direct Investment is allowed into the LLP from 2014

Foreign partners could be appointed in LLP

This makes LLP an attractive business model

Earlier only Company form of business could raise FDI

IS LLP MODEL SUITABLE FOR STARTUP'S

Earlier Start-up's were choosing company model

Now LLP model is an option for Startup's

Startup India scheme- requires the startup venture to be registered as an LLP or a company to apply for tax incentive



DRAWBACK OF LLP

No access to capital market in case of LLP

Cannot list in a stock exchange

Access to capital market is a key factor that provides Company form of business an advantage

RELEVANCE OF LLP

Business organizations which allows financial resources to be pooled-

- LLP allows for financial resources to be pooled
- FDI is also allowed

Provides a separate identity from the owners and develop goodwill of its own

- Yes

A system by which the law facilitate and incentivize risk taking

- Yes, Limited liability to the extent of contribution by a partner