The directors of such (joint-stock) companies, however, being the managers rather of other people’s money than of their own, it cannot well be expected, that they should watch over it with the same anxious vigilance with which the partners in a private copartnery frequently watch over their own. Negligence and profusion, therefore, must always prevail, more or less, in the management of the affairs of such a company.¹

Although the modern champion of this corporate efficiency aspect of agency cost is Michael Cole Jensen² of the Harvard Business School, the essence of this concept was highlighted as early as in 1776, when Adam Smith³ wrote ‘An Inquiry into the Nature and Causes of the Wealth of Nations’.⁴ However, it is analyzed that in case of the LLP the role of directors is done away rather the concept of designated partners is introduced thereby, which provides the reins of the management of the LLP to the partners.

¹ Adam Smith in his book, ‘An Inquiry into the Nature and Causes of the Wealth of Nations’ criticized the joint-stock company corporate form because the separation of ownership and management could lead to inefficient management. The context for Adam Smith’s term for “companies” in the Wealth of Nations was the joint-stock company. In the 18th century, the joint-stock company was a distinct entity created by the King of Great Britain as Royal Charter trading companies. These entities were sometimes awarded legal monopoly in designated regions of the world, such as the British East India Company.

² Born November 30, 1939 in Rochester (Minnesota) United States, he received his A.B. in Economics from Macalester College in 1962. He received both his M.B.A. (1964) and Ph.D. (1968) degrees from the University of Chicago Booth School of Business, notably working with Professor Merton Miller (1990 co-winner of the Nobel Prize in Economics). He is an American economist working in the area of financial economics. He is currently the managing director in charge of organizational strategy at Monitor Group, a strategy consulting firm, and the Jesse Isidor Straus Professor of Business Administration, Emeritus at Harvard University. Prof. Jensen has played an important role in the academic discussion of the capital asset pricing model, of stock options policy, and of corporate governance, developing a method of measuring fund manager performance, the so-called Jensen’s alpha.

³ He was a Scottish moral philosopher and a pioneer of political economy. Smith (June 5, 1723 to July 17, 1790) is cited as the father of modern economics and is still among the most influential thinkers in the field of economics today.

⁴ Adam Smith is best known for two classic works: The Theory of Moral Sentiments (1759) and An Inquiry into the Nature and Causes of the Wealth of Nations (1776). The latter, usually abbreviated as, ‘The Wealth of Nations’; is considered his magnum opus and the first modern work of economics. Smith is cited as the father of modern economics and is still among the most influential thinkers in the field of economics today.
6.1 Prologue

India being a member of the extended global economic village has not remained untouched with the meltdown and economic recession. While G-20 summit has been held to evolve policies for walking out of shadow of economic recession, Indian Inc. apprehends further slowdown and losses in the running of the industries. There is a concern that in the upcoming times, there would be a reporting of various industries being on the verge of insolvency or turning insolvent and a timely action is to be taken to avoid loss of production, loss to Government revenue and employment as also the locking up of invertible funds of banks and financial institutions.\(^5\)

In the present day context, it is analyzed that while the losses in the industry are escalating and the government is taking steps to counter the economic downturn, the LLP legislation will play a pivotal role to improve the business environment and Indian economy as such. The various avenues of opting for the LLP and its impact on business environment are discussed at length in this Chapter.

6.2 The Limited Liability Partnership: A Risk Management Tool

The Limited liability encourages greater boldness and risk-taking among the business community, so that new avenues to increasing commerce are explored. In the globalised economy, the need to enhance the competitiveness of business and to build, or nurture, a culture of enterprise and entrepreneurship is duly recognized and the LLP is an innovation in that direction only.\(^6\)

The statutes relating to limited liability have probably done more than any legislation of the last fifty years to further the commercial prosperity of the country. They have, to the advantages as well of the investors as of the public, allowed and encouraged aggregation of small sums into large capitals which have been employed in undertaking of great public utility largely increasing the wealth of the country.\(^7\)

\(^5\) [2009] 90 CLA (Mag.) 10.
\(^7\) Buckley J. aptly described the advantages of limited liability in *Re London and Globe Finance Corporation*, [1903] 1 Ch 728 at 731. Though it was said in relation to incorporating a company but it is equally applicable to limited liability partnerships as well.
In many instances, a LLP will owe its selection as a business vehicle to a process—albeit perhaps an unconscious one—of risk management. In other words, the whole process of creating a LLP is to minimize personal exposure to the present and future risks of the business to be operated by the LLP. Logic dictates therefore that the advantages conferred by the LLP’s existence need to be maximized.\textsuperscript{8} To look at it in another way, the business needs to be run in such a way that the exceptions which bring back into play the possibility of personal liability need to be minimized.\textsuperscript{9}

States, particularly with a democratic setup, tend to react to the aspirations of the people. These aspirations can be as much commercial or economic, as they can be political. States have from time to time, provided regulatory legitimacy to several forms of business organization that the subjects think would better secure their commercial aspirations. The spectrum of State responsiveness varies from a mere “recognition” of newer manners of conducting business activities to “creation” of newer business forms.\textsuperscript{10} “India, that is Bharat, which shall be the Union of States”\textsuperscript{11} has rich set of choices for determining the future growth path in a globalised competitive environment. It is observed that economic concerns extends to the business environment also and in the modern business environment, scale of operation has greatly increased because of technological development, entrepreneurial expertise and above all the need of the hour. A business form now available world-wide, \textit{i.e.} the LLP, introduced in India with effect from April 1, 2009 by virtue of the LLP Act; combines the ease of running a business like that of Partnership and separate legal entity status and limited liability aspect like that of a Company.

6.3 The Limited Liability Partnership: Advancing Corporate Governance

The phrase corporate governance emerged probably somewhere in 1975 in corporate law.\textsuperscript{12} Today, corporate governance is no longer a mere phrase but has developed into a

\textsuperscript{9} Ibid.
\textsuperscript{11} Article 1, \textit{The Constitution of India}, 1950.
concept that is part of corporate law. This is reflected in the titles of articles, books, corporate governance codes and guidelines, reports and all sorts of other documents. As a concept, corporate governance is largely part of that branch of the law that can be called company law. Company law is part of a much larger realm of the law that can be called economic law. The purpose of economic law is the regulation of economic activities. Economic law encompasses subjects like antitrust law, financial law, intellectual property law, company law, labour law, the law of European Community and of the World Trade Organization (WTO). Economic activities may be undertaken by all sorts of legal entities, ranging from the simple sole proprietorship to the listed corporation. The purpose of company law is to regulate these legal entities. The connection between the economy and company law was already recognized in a report on corporate governance published in the UK in 1992, the Cadbury Report\textsuperscript{13} that states, “Country’s economy depends on the drive and efficiency of its companies”. Because company law is concerned with the regulation of legal entities, it is to a large extent more of a procedural and organizational nature than containing the rules of substance. As concerns the phrase company law, it should be noted that the scope of company law is wider than just companies. Some of the legal forms addressed by company law are the sole proprietorship, partnerships and the company or corporation.\textsuperscript{14} Now the LLPs too joins the legal business forms.

6.4 The Limited Liability Partnership: Imbibed Financial Disclosures and Critical Factors Affecting Business Environment

Chapter VII of the LLP Act exclusively deals with ‘Financial Disclosures’. These imbibed provisions are discussed hereunder along with the main critical factors which affect the business environment.\textsuperscript{15}

\textsuperscript{13} ‘The Financial Aspects of Corporate Governance’, drawn up by the Committee on the Financial Aspects of Corporate Governance (December 1992, by the name of the committee’s chairperson this Report is also called the Cadbury Report).

\textsuperscript{14} Cornelis de Groot, Corporate Governance as a Limited Legal Concept, 5 (2009).

\textsuperscript{15} Sections 34 to 41, The LLP Act, 2008.
6.4.1 **Accountability**

The paradigm shift in the business and economic environment in India during last few years has led to increased attention being devoted to accounting standards as a means towards ensuring potent and transparent financial reporting by corporate entities. One will not go far wrong, as fundamentally a sub-species of company, the LLP for all accounting purposes ensures that partners take accountability of their act and not mismanage LLP according to their whims and wishes. The ‘LLP Agreement’ is documented and registered compulsorily which is not necessary in case of partnership firms. The LLPs has a more austere system of accountability with obligatory requirement to file annual statement of accounts and solvency and also annual returns as per the dictate of the law with the Registrar of the LLP every year. It is observed that the LLP shields and provides adequate shelter to each and every partner from any misdemeanor of other partners. Although tax liability under the LLP is less than that of the companies but it requires clear accounting and record keeping for monitoring performance and ethics. Accountability feature makes the LLP function in professional and principled manner with careful consideration to its operation.

6.4.2 **Compliance**

The LLP requires that Designated Partners be appointed who run the business and are statutorily responsible for all legislative compliance as prescribed under various laws besides their liability as ‘partners per-se’. In case of failure to maintain the account books,

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16 Supra note 8, at 99.
17 Section 35, *The LLP Act*, 2008; the Annual Return is to be filled in form 11 with ROC within 60 days of the closer of the financial year. The annual return is available for public inspection on payment of the prescribed fees to the Registrar.
18 The accounts of every Limited Liability Partnership are to be audited in accordance with Rule 24 of the Limited Liability Partnership, Rules 2009. Such rules, inter-alia, provides that any Limited Liability Partnership, whose turnover in any financial year, exceeds forty lakh rupees, or whose contribution exceeds twenty five lakh rupees, is required to get its accounts audited. However, if it is less and if the partners still want to get the accounts of such Limited Liability Partnership audited, the accounts shall be audited only in accordance with such rule.
19 Every Limited Liability Partnership requires at least two Designated Partners who shall be individuals and at least one of the Designated Partner shall be a resident of India. In case of a Limited Liability Partnership in which all the partners are bodies corporate or in which one or more partners are individuals and bodies corporate, at least two individuals who are partners of such Limited Liability Partnership or nominees of such bodies corporate shall act as designated partners. They are required to obtain a “Designated Partner’s Identification Number”.
20 Section 8(b), *The LLP Act*, 2008.
other records, audit, annual report the designated partner is liable for the minimum fine of Rs. 10,000/- and it may extend to Rs. 1,00,000/-.\textsuperscript{22} If any false statement is made or any material fact is hide of then the guilty is liable for the minimum fine of Rs. 1,00,000/- and he may be fined up to maximum of Rs. 5,00,000/- besides maximum imprisonment of two years.\textsuperscript{23} The Registrar has the power to obtain such information which he may consider necessary for the purposes of carrying out the provisions of the Act, from any designated partner, partner or any employee.\textsuperscript{24} In order to ensure compliance management, it has been provided that the LLPs can file relevant documents after their due dates with additional fees up to 300 days but if there is delay of 300 days or more, the LLPs will be required to pay normal filing fees, additional fee and shall also be liable to be prosecuted. The LLP Act also provides for compounding of offences, which are punishable with fine only.\textsuperscript{25}

### 6.4.3 Transparency

The LLP are fiscally transparent entities and they enjoy the creditworthiness due to the above stated accounting standards and principles; mandatory disclosures and compliances. Traders and supplier who transact business with the LLPs are comparatively safe, sure and secure of their transactions. If required they can inspect the documents pertaining to incorporation, details of partners (and changes, if any, made therein), statement of account & solvency and annual return on the payment of the fees of Rs 50/- and fees for certified copy or extract of any document shall Rs. 5/- per page.\textsuperscript{26} It is analyzed that because of the greater degree of element of transparency the Banks and other financial institutions will be more contented and comfortable in lending financial assistance in the form of loans and limits to the LLPs as compared to traditional partnership firms and sole-proprietorship form of business entities.

### 6.4.4 Whistle-Blowing

‘Whistle-blowing’ is the exposure of corruption and wrong doing made in public interest by people within or from outside organization. The disclosure of information relates

\begin{itemize}
\item \textsuperscript{22} Sections 34 and 35, \textit{The LLP Act}, 2008.
\item \textsuperscript{23} Section 37, \textit{The LLP Act}, 2008.
\item \textsuperscript{24} Incase of default the guilty will be punishable with a minimum fine of Rs. 2000/- and it may extend up to Rs. 25,000/- under Section 38 of \textit{the LLP Act}, 2008.
\item \textsuperscript{25} Section 39, \textit{The LLP Act}, 2008.
\item \textsuperscript{26} Section 36, \textit{The LLP Act}, 2008 read with Rule 26, \textit{The LLP Rules}, 2009.
\end{itemize}
to (i) violation of law, rule and regulation; (ii) mismanagement and negligence causing danger to public health and safety; (iii) financial irregularities, fraud and manipulation of records; (iv) misappropriation of assets and funds; and (v) misuse of official position for private gains. Whistle-blowers play an important role in preventing corruption, frauds and misfeasance by exposing misdeeds of officers in their organizations and companies. The concept assumed great significance in the US in the wake of collapse of corporate gains like Enron, Tyco, Quest, Global Crossings and WorldCom and the Xerox fiasco. In India, recent frauds and scams like Satyam, 2-G Spectrum, Asian Games, housing and land allotments have brought into focus the need for an effective policy, law and system to check and prevent to check frauds, scams and malfeasance in the government and corporate. The LLP Act provides comprehensive provision to protect the interest of whistle blower on the one side and to encourage whistle blowers to raise their voice against any unjust act on the other hand. Although the RBI has formulated the whistle-blowers scheme for ensuring financial stability and enhancing public confidence, the Securities and Exchange Board of India also provides for the Whistle-Blower Policy under Clause 49 of the Listing Agreement yet Clause 49 is non-mandatory requirement and applicable to listed companies only. However, the Public Interest Disclosure (Protection of Informers) Bill, 2010 and the much hyped Jan Lokpal are yet to see the sunshine. It is pertinent to mention here that ICICI Bank, Tatas, Infosys and Wipro have taken lead to have the whistle-blowers policy in their respective organizations.

6.5 Check on Unscrupulous Limited Liability Partnerships

Inspectors, as appointed by the Central Government, investigate the affairs of the LLPs. More so, to protect and preserve the interests of the various stakeholders the Central Government...

27 [2012] 107 CLA (Mag.) 41.
29 Clause 49 states, “The Company may establish a mechanism for employees to report to the management concerns about unethical behavior, actual or suspected fraud or violation of the company’s code of conduct or ethics policy. This mechanism could also provide for adequate safeguards against victimization of employees, who avail of the mechanism and also provide for direct access to the Chairman of the Audit Committee in exceptional cases. Once established, the existence of the mechanism may be appropriately communicated within the organization”.
30 As the ICICI Bank’s securities are listed in the New York Stock Exchange and its subsidiary ICICI Securities operates in US, the ICICI Bank’s Whistle-Blowers policy is in tune with the Sarbanes-Oxley Act.
31 The manner and procedure for conduct of investigation is specified under Chapter IX of the LLP Act, 2008 and Chapter IX of the LLP Rules, 2009. It has been dealt at length in Chapter IV of this research work.
Government thwarts ‘fly-by-night’ promoters and also the LLPs which vanish after coming into existence. The various bottlenecks provided by the Central Government under the LLP Act include making the incorporation of the LLPs mandatory with the provision of DIN (formerly DPIN) to be obtained by every designated partner. Besides, MCA-21 e-Governance process ensures tracking of any unscrupulous promoter/partner of the LLP, the details of partners including any changes, if any made therein are to be filed with the Registrar. The filing of annual documents (the statement of account and solvency and the annual return) with the Registrar is also made mandatory. Such documents will also be open for public inspection; Compulsory audit of all LLPs (except small LLPs which may be exempted by way of notification by Central Govt.); and last but not the least the provision of scrutiny by the Registrar of the documents filed besides the power to call for any other relevant information from the LLP or its partners/officials and also for summoning of the LLPs’ partners/officials in certain cases.32

6.6 Limited Liability Partnership: Conversion Avenue

The fact that limited liability has all too often enabled many to enrich themselves at the expenses of those who have given credit to the companies they control is the price the business world has to pay for the potentiality for growth and convenience which goes with limited liability.33

The LLP which shares the limited liability of company with flatter internal hierarchy of partnership provides the unique enabling feature of converting the existing business organizations into the LLPs under Chapter X of the LLP Act. Under these provisions a partnership firm (constituted under the under Indian Partnership Act, 1932);34 a private

34 Section 55, The LLP Act, 2008; Conversion from firm into limited liability partnership – A firm may convert into a limited liability partnership in accordance with the provisions of this Chapter and the Second Schedule. A firm may apply to convert into a Limited Liability Partnership if and only if the partners of the Limited Liability Partnership to which the firm is to be converted, comprise all the partners of the firm and no one else. It have to comply with the provisions of the second schedule to the Act and firm has to apply for such conversion to ROC in form No. 17 with prescribed fees and ROC will give certificate of registration of Limited Liability Partnership in form No. 19.
company\textsuperscript{35} and unlisted public company\textsuperscript{36} promulgated under the Companies Act, 1956 can be converted into the LLPs.

The term 'convert' is defined as:\textsuperscript{37}

\textsuperscript{35} Section 56, \textit{The LLP Act}, 2008; Conversion from private company into limited liability partnership—A private company may convert into a limited liability partnership in accordance with the provisions of this Chapter and the Third Schedule.

A private company may apply for conversion into Limited Liability Partnership only if there is no security interest in its assets subsisting or in force at the time of application and all the share holders of the company and no one else are going to be the partners of limited liability partnership. Company will apply for such conversion to ROC in form No. 18, with a prescribe fees and ROC will give certificate of registration in form No. 19.

\textsuperscript{36} Section 57, \textit{The LLP Act}, 2008; Conversion from unlisted public company into limited liability partnership—An unlisted public company may convert into a limited liability partnership in accordance with the provisions of this Chapter and the Fourth Schedule.

An unlisted public company may apply for conversion into Limited Liability Partnership only if there is no security interest in its assets subsisting or in force at the time of application and all the share holders of the company and no one else are going to be the partners of Limited Liability Partnership. Company will apply for such conversion to ROC in form No. 18, with a prescribe fees and ROC will give certificate of registration in form No. 19.

Section 58, \textit{The LLP Act}, 2008; Registration and effect of conversion—(1) The Registrar, on satisfying that a firm, private company or an unlisted public company, as the case may be, has complied with the provisions of the Second Schedule, the Third Schedule or the Fourth Schedule, as the case may be, shall, subject to the provisions of this Act and the rules made there under, register the documents submitted under such Schedule and issue a certificate of registration in such form as the Registrar may determine stating that the limited liability partnership is, on and from the date specified in the certificate, registered under this Act:

Provided that the limited liability partnership shall, within fifteen days of the date of registration, inform the concerned Registrar of Firms or Registrar of Companies, as the case may be, with which it was registered under the provisions of the Indian Partnership Act, 1932 (9 of 1932) or the Companies Act, 1956 (1 of 1956), as the case may be, about the conversion and of the particulars of the limited liability partnership in such form and manner as may be prescribed.

(2) Upon such conversion, the partners of the firm, the shareholders of private company or unlisted public company, as the case may be, the limited liability partnership to which such firm or such company has converted, and the partners of the limited liability partnership shall be bound by the provisions of the Second Schedule, the Third Schedule or the Fourth Schedule, as the case may be, applicable to them.

(3) Upon such conversion, on and from the date of certificate of registration, the effects of the conversion shall be such as specified in the Second Schedule, the Third Schedule or the Fourth Schedule, as the case may be.

(4) Notwithstanding anything contained in any other law for the time being in force, on and from the date of registration specified in the certificate of registration issued under the Second Schedule, the Third Schedule or the Fourth Schedule, as the case may be,—

(a) there shall be a limited liability partnership by the name specified in the certificate of registration registered under this Act;

(b) all tangible (movable or immovable) and intangible property vested in the firm or the company, as the case may be, all assets, interests, rights, privileges, liabilities, obligations relating to the firm or the company, as the case may be, and the whole of the undertaking of the firm or the company, as the case may be, shall be transferred to and shall vest in the limited liability partnership without further assurance, act or deed; and

(c) the firm or the company, as the case may be, shall be deemed to be dissolved and removed from the records of the Registrar of Firms or Registrar of Companies, as the case may be.
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.

Meaning thereby, upon conversion, all the assets and liabilities of the predecessor firm or company will get transferred to and vested in the LLP and the act of conversion will lead to the dissolution of the predecessor partnership firm/private limited company/unlisted public company. For any conversion to take place, the LLP must be at that time, the mirror image of the partnership firm/private limited company/unlisted public company sought to be converted. To be more explicit, all the partners of the partnership firm or shareholders of the private limited company/unlisted public company, as the case may be, should take over as the partners of the LLP at the time of conversion. However, a sole proprietorship, a society or a trust cannot avail this opportunity of conversion under the provisions of the LLP Act. The procedure of conversion is enshrined under Section 58 and Schedule II to Schedule IV of the Act.

Progress …is not and cannot be continuous. The next important step forward is often initially costly, and cannot be undertaken until a certain quantum of prospective advantages is accumulated.

The following table deals with the conversion procedures and effect of the conversion to LLP of each of firm, private limited company and unlisted public company:

<table>
<thead>
<tr>
<th>Particulars</th>
<th>PARTNERSHIP FIRM</th>
<th>PRIVATE LIMITED COMPANY or UNLISTED PUBLIC COMPANY</th>
</tr>
</thead>
<tbody>
<tr>
<td>Essential conditions for Conversion</td>
<td>The firm may apply to convert into a LLP in accordance to the second schedule if and only if the partners of the LLP into</td>
<td>The private limited company or an listed public company may apply for the conversion to LLP if and only if, a)</td>
</tr>
</tbody>
</table>

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37 The Second, the Third and the Fourth Schedule(s), *The LLP Act*, 2008.
39 Allyn Abbott Young (September 19, 1876 to March 7, 1929) is the celebrated American economist of the early 20th century. Uniquely, Allyn Young had also been president of the American Statistical Association (1917) and the American Economic Association (1925).
<table>
<thead>
<tr>
<th>Statements to be filed with the Registrar</th>
</tr>
</thead>
<tbody>
<tr>
<td>i. A statement by all its partners in Part B of form 17 accompanied by fee containing the name and registration number and the date on which the firm was registered under the India Partnership Act 1932 or under any other law.</td>
</tr>
<tr>
<td>ii. Incorporation document and statement referred to in Section 11.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Registration of Conversion</th>
</tr>
</thead>
<tbody>
<tr>
<td>The registration shall register the documents and issues a certificate of registration under his seal in form 19 specify the date of registration.</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Information to be Conveyed</th>
</tr>
</thead>
<tbody>
<tr>
<td>The LLP shall inform the concerned Registrar of firms about conversion of firm in to LLP in form 14 within 14 days of date of registration.</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Refusal of Registration by Registrar</th>
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</thead>
<tbody>
<tr>
<td>If Registrar refuses to register LLP, the applicant firm may appeal to the NCLT within 60 days from the date of such refusal.</td>
</tr>
</tbody>
</table>

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<tr>
<th>Refusal of Registration by Registrar</th>
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<tbody>
<tr>
<td>If registrar refuses to registrar LLP, the applicant company may appeal to the NCLT within 60 days from the date of refusal.</td>
</tr>
</tbody>
</table>
| Effect of Registration                                                                 | On and from the date of registration specified in the certificate of registration issued-
|                                                                                      | i. A LLP by name specified in the certificate of registration registered under this act comes into existence.  
|                                                                                      | ii. All tangible (movable and immovable) property as well as intangible property vested in the firms, all assets, interest, rights, privileges, liabilities, obligations relating to the firm and the whole of the under taking of the form shall be transferred to and shall vested in the LLP without further assurance, act or deed.  
|                                                                                      | iii. The firm shall be deemed to be dissolved and if earlier registered under the Indian Partnership Act, 1932 removed from the records maintain under that Act.  
| Registration in Relation to Property                                               | On and from the date of registration specified in the certificate of registration issued-
|                                                                                      | i. A LLP by the name specified in the certificate of registration registered under this act comes into existence.  
|                                                                                      | ii. All the tangible (movable and immovable) property as well as intangible property vested in the company all assets, interests, rights, privileges, liabilities, obligations relating to the company and whole of the company shall be transferred to and shall vested in the hands of LLP without further assurance act or deed.  
|                                                                                      | iii. The company shall deemed to be dissolved and removed from the record of the registrar of companies.  
|                                                                                      | If any property of the firm is registered with any authority then the newly formed LLPs shall as soon as possible take necessary steps as required by the authority to notify the authority of the conversion  
|                                                                                      | If any property of such company is registered with any authority then the newly formed LLPs shall as soon as possible take necessary steps as required by the authority to notify the authority of
<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pending Proceeding</td>
<td>All pending proceedings in the court, NCLT of any other authority, by or against the firm may be continued, completed or enforced or against the new LLP.</td>
<td>All pending proceedings in the court, NCLT of any other authority, by or against the company may be continued, enforce by or against the new LLP.</td>
</tr>
<tr>
<td>Continuation of Conviction, Ruling, Order or Judgment</td>
<td>Any conviction, ruling, order or judgment by any court, NCLT or other authority in favour of or against the firm may be enforced by or against the newly registered LLP.</td>
<td>Any conviction, ruling, order or judgment by any court, NCLT or other authority in favour of or against the private limited company may be enforced by or against the newly registered LLP.</td>
</tr>
<tr>
<td>Existing Agreements</td>
<td>Every agreement to which firm was the party immediately before the date of registration shall have effect as if the LLP were a party to such an agreement instead of the firm and for any reference to the firm in respect of anything to be done, a reference to the LLP is substituted.</td>
<td>Every agreement to which company was the party immediately before the date of registration shall have effect as if the LLP were a party to such an agreement instead of the company and for any reference to the firm in respect of anything to be done, a reference to the LLP is substituted.</td>
</tr>
<tr>
<td>Existing Contracts etc.</td>
<td>All deeds, contracts, schemes, bonds, agreements, application, instruments, and arrangements subsisting before the date of registration</td>
<td>All deeds, contracts, schemes, bonds, agreements, application, instruments, and arrangements subsisting before the date of registration</td>
</tr>
<tr>
<td><strong>Continuation of the Employment</strong></td>
<td><strong>Existing Appointment authority or power</strong></td>
<td><strong>Notice of Conversion in Correspondence</strong></td>
</tr>
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<td>----------------------------------</td>
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<tr>
<td>Every contract of the employment shall continue to be in force on or after the date of registration as if the LLP was the employer there under instead of the firm.</td>
<td>Every appointment of the firm in any role or capacity and any authority or power conferred on the firm which is in force immediately before the date of registration shall take effect and operate from that date as if it were conferred on the LLP.</td>
<td>Every official correspondence of the LLP for the period of twelve months commencing not later than fourteen days after the date of registration, shall bear a statement that it was, as from the date of registration converted, form a firm into LLP and the name and registration number, if applicable of the LLP.</td>
</tr>
<tr>
<td>registration relating to the firm or to which the firm is party. Shall continue in force as if they relate to LLP and shall be enforceable by or against the LLP.</td>
<td>registration relating to the company or to which the company is party. Shall continue in force as if they relate to LLP and shall be enforceable by or against the LLP.</td>
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</tr>
</tbody>
</table>
It has been provided in the Act that on conversion of a firm, private company or unlisted public company into the LLP, any approval, permit or license issued to the firm, private company or unlisted public company under any other Act shall be transferred in the name of converted entity i.e. the LLP, but this provision is subject to the provisions of such other Act under which such approval, permit or license was issued.41

Every partner of the partnership firm that is converted into a LLP shall continue to be personally liable (jointly and severally) for the liabilities and obligations of the partnership which were incurred prior to the conversion or which arose before the conversion. Such provisions are not applicable in the case of conversion of a company into a LLP, presumably since liability of shareholders in a company is anyway limited.42 As against the company form of structure, LLPs provide flexibility without imposing detailed legal and procedural requirements. The internal governance structure of a company is regulated by the statute (the Companies Act, 1956) whereas for a LLP, it is by way of a contractual agreement between the partners.43 It is observed as compared to a company that the non-existence of the inherent division of management-ownership coupled with more flexibility and less compliance requirements is a boon for the LLP. In view of various benefits accorded to LLPs any person setting up a new venture may opt for the LLP structure in consonance of its needs and other commercial considerations.

The Ministry has been examining some of the issues raised by stakeholders with regard to clarifications on the provisions of the LLP Act with regard to conversion of a partnership firm into the LLP. The issues relate to clarification with regard: 44

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43 Although the limited liability partnership agreement is not mandatory in nature and in its absence, Section 23(4) of the LLP Act provides for the application of First Schedule to govern the mutual rights and duties of the partners and that of limited liability partnership respectively.
44 Endt. No. 1/10/2012 CL-V; General Circular No. 09/2013 dated April 30, 2013 issued by the Joint Secretary, the Ministry of Corporate Affairs, Govt. of India.
i) The provisions of Sections 55 and 58 of the LLP Act, 2008 read with Second Schedule thereto, inter-alia, provide for requirements in respect of conversion of a single partnership firm into a single LLP. The LLP Act does not provide for conversion of two or more firms into a single LLP.

ii) The provisions of Section 58(4)(b) of the LLP Act provide that on conversion of a firm into a LLP, as per the provisions of the said Act all property, assets, interests, rights, privileges, liabilities, obligations relating to the firm and the whole of the undertaking of the firm shall be transferred to and shall vest in the LLP without further assurance, act or deed. Accordingly, if a CA audit firm, being an auditor in a company under the Companies Act, 1956, gets converted into an LLP after complying with the relevant provisions of the LLP Act, then, such a LLP, in accordance with the provisions of Section 58(4)(b) of the LLP Act would be deemed to be the auditor of the said company. Reference is also drawn to the notification number SO 1152(E) dated May 23, 2011 and General Circular 30A dated May 26, 2011 of the Ministry in this regard. The relevant appointee company may take note of such change in status of the auditor through a resolution of the Board.

The above stated clarification was issued by the Joint Director, the Ministry of Corporate Affairs, to all Regional Directors and all Registrar of Companies for compliance at the end of the concerned stakeholders, Registrar of Companies and appointee companies.45

It is analyzed that the LLP Act made a conspicuous omission regarding the conversion of a LLP into other business forms like company or partnership. Consequently, once a LLP comes into existence, either by incorporation or by conversion, it has to continue business in that corporate format until its winding-up and dissolution. After that the partners, if they intend to form a partnership or company by employing and exploiting the assets of the erstwhile the LLP. However, enabling provisions may be promulgated in the Indian Partnership Act, 1932 and the Companies Act, 1956 for such conversion in the times to come.

45 Ibid.
As far as capital gain tax is concerned, it has been expressly declared that in relation to LLPs, while converting a private company or unlisted public company into LLP, capital gain tax exemption will be available subject to the following conditions being satisfied:\(^{46}\)

1. The total sales, turnover or gross receipts in business of the company do not exceed sixty lakh rupees in any of the three preceding previous years;
2. The shareholders of the company become partners of the LLP in the same proportion as their shareholding in the company;
3. No consideration other than share in profit and capital contribution in the LLP arises to partners;
4. The erstwhile shareholders of the company continue to be entitled to receive at least 50 per cent of the profits of the LLP for a period of 5 years from the date of conversion;
5. All assets and liabilities of the company become the assets and liabilities of the LLP; and
6. No amount is paid, either directly or indirectly, to any partner out of the accumulated profit of the company for a period of 3 years from the date of conversion.

In matters arising under Part IX of the Companies Act, 1956, which provides for the conversion of a partnership firm into a company limited by shares, the Courts have taken the view that in cases of conversion under Part IX, there is an automatic statutory vesting of all the property of the partnership firm on the date of registration in the company and that there is no transfer or conveyance. This view has been taken, inter alia, in the cases of *Vali Pattabhirama Rao\(^{47}\)* and *Ramasundari Ray v. Syamendra Lal Ray\(^{48}\)*. On that reasoning, it is also likely that since no instrument will be required to be executed, there will be no incidence of stamp duty on such conversion. However, the conversion of a general partnership into a LLP would have the effect of altering the obligations of the partners inter se as well as vis-à-vis...
vis third parties. In that sense, the Revenue may have an arguable case for imposing capital gains tax under Section 45 of the Income-Tax Act. This aspect also needs to be clarified.

The step involved in converting the Partnership firm, Private Company and Unlisted Public Company to LLP includes:

1. Deciding the partners and designated partners
2. Obtaining the Designated Partners Identification Number & the Digital Signature
3. Checking the availability of Name for LLP
4. Drafting of the LLP Agreement
5. Filing of the Incorporation Document
6. Filing the Application for Conversion
7. Certificate of Registration
8. Information for conversion to the Registrar

It is analyzed that the advantageous features of the LLP such as a body corporate with separate legal entity amid perpetual succession, unlimited number of partners having limited liability with no partner being liable on account of the independent or unauthorized actions of other partner(s), no limit for minimum capital contribution, higher creditworthiness, flexibility in managing the business with FDI allowed to access to foreign expertise are distinct over other forms of organizations. These divergent features are the key drivers for forming the LLPs in the business environment.

6.6.1 **Income Tax Treatment on Conversion to the Limited Liability Partnership**

Another major reason for conversion of a firm/company into a LLP is on the taxation front. Currently, the Income-Tax Act, 1961, provides for payment of Minimum Alternate Tax (MAT) as also for payment of Dividend Distribution Tax (DDT) by companies where as

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49 The process is more or less analogous to that of the incorporation of the LLP. For details see: Section 55 read with the Second Schedule; Section 56 read with the Third Schedule and Section 57 read with the Fourth Schedule. The process is more or less analogous to that of the incorporation of the LLP.

50 MAT was introduced in the financial year 1997-98, under the Income Tax Act, to tax companies making huge profits and declares dividends to their shareholders but because of exemptions and deductions do not have significant taxable income. It ensures that no taxpayer with substantial income can avoid tax liability by means of exclusions and deductions.

51 DDT is the tax levied by the Indian Government on companies according to the dividend paid to a company's investors.
LLP is not liable to pay MAT or DDT, considering the legislative intent. Although, the LLP Act makes provision for conversion of various business organizations to the LLP but there is no specific provision in the Income Tax Act for the treatment of income tax in such cases. In conversion to the LLP 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. Similarly, a conversion to the 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.

Conversion of partnership firm to LLP does not attract any tax implication if the rights and obligations of the partners remain the same and there is no transfer of any asset or liability after conversion. In CIT v. Texspin Engg, it was held that when a firm is converted into a limited company, it is not transfer by way of distribution under Section 45(4) of the Income Tax Act. There is no transfer of asset as contemplated under Section 45(1) of the Income Tax Act. Hence, question of capital gains tax does not arise. It was also held that depreciation for the year is allowable to the firm for the year. Section 34 of the Income Tax Act does not apply as the assets are not sold, discarded, demolished or destroyed. Thus, there should be no capital gain tax if the rights and obligations of the partners remains the same and there is no transfer of any asset or liability after conversion.

6.7 Impact of the Limited Liability Partnership on Micro, Small & Medium Enterprises Sector

Worldwide, the MSME have been accepted as the engine of economic growth and for promoting equitable development. The major advantage of the sector is its employment

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52 Commissioner of Income Tax v. Texspin Engineering and Manufacturing Works, (2003) 263 ITR 345 (Bom) (The expression ‘transfer of a capital asset’ in Section 45(1) is required to be read with Section 2(47)(ii)) (which states that the transfer in relation to a capital asset shall include extinguishment of any rights therein); Also see: Anant Pai, “LLP-its Incidental Tax Considerations”, Income Tax Rev., Vol. XXXV, No. 6, (Sept.), 61 (2009).

53 Section 10, the Finance Act, 2010 and Section 47, the Income Tax Act, 1961.

54 (2003) 129 Taxman 1 = 44 SCL 239 = 180 CTR 497 = 263 ITR 345 (Bom HC DB).
potential at low capital cost. The labour intensity of the micro, small and medium enterprises sector is much higher than that of the large enterprises. The MSME constitute over 90% of total enterprises in most of the economies and are credited with generating the highest rates of employment growth and account for a major share of industrial production and exports. In India too, the MSMEs play a pivotal role in the overall industrial economy of the country. In recent years the MSME sector has consistently registered higher growth rate compared to the overall industrial sector. With its agility and dynamism, the sector has shown admirable innovativeness and adaptability to survive the recent economic downturn and recession.

The primary responsibility of promotion and development of the MSME is of the State Governments. However, the Government of India, supplements the efforts of the State Governments through various initiatives. Governed by the Micro, Small & Medium Enterprises Development Act, 2006, MSME sector constitutes an important segment of business environment with the number of enterprises estimated to be about 26 million, providing employment to about an estimated 70 million persons, creating 1.3 million jobs every year, producing more than 8000 quality products for the Indian and international markets and it accounts for about 45 per cent of the manufacturing output and 40 per cent of the total exports of the country. Testifying the agonizing litany of legal and procedural requirements, 94% businesses in of MSME sector is being carried on as proprietorship & partnership, which generally forms part of the unorganized sector and only 3% of the MSME

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55 An enterprise engaged in the manufacture or production, processing or preservation of goods where investment in plant and machinery does not exceed Rs. 25 lakh and if providing or rendering of services an enterprise where the investment in equipment does not exceed Rs. 10 lakh.

56 An enterprise engaged in the manufacture or production, processing or preservation of goods where the investment in plant and machinery is more than Rs. 25 lakh but does not exceed Rs. 5 crore and if providing or rendering of services an enterprise where the investment in equipment is more than Rs.10 lakh but does not exceed Rs. 2 crore.

57 An enterprise engaged in the manufacture or production, processing or preservation of goods where the investment in plant and machinery is more than Rs.5 crore but does not exceed Rs. 10 crore but does not exceed Rs. 2 crore.

58 As per available statistics (4th Census of MSME Sector), this sector employs an estimated 59.7 million persons spread over 26.1 million enterprises. It is estimated that in terms of value, MSME sector accounts for about 45% of the manufacturing output and around 40% of the total export of the country.


60 Act No. 27 of 2006.

are incorporated as Companies. It is submitted that the main reason of non-presence of corporate form in the MSME sector is high compliance cost and large regulatory control vis-à-vis proprietorship and partnership which are subject to complete flexibility and less compliance cost. But for this gain, the sector is losing heavily on access to easy and cheap credit as well as technology.

Small and medium enterprises, small firms, small professionals and firms, where professionals from different fields can come together, can provide service under one roof. LLP would be a very revolutionary mode of doing business. I hope all our small producers and SMEs would take advantage of this provision.

The LLP format is a popular business model with MSMEs in developed countries like US, UK, Singapore, Australia and others. Now in India too, the LLP form has opened the door for this sector to enjoy the dual advantage of less compliance with higher access to credits and technology in the market. Large number of start-ups counterbalanced by a substantial number of exits of MSMEs is attributed to the vulnerable business environment for MSMEs, but now the LLP allows MSMEs an easy access to corporatization and its attendant benefits of revival and exit. Another advantage for MSME that in the new LLP form alike Companies, only the LLP having turnover and contribution of more than Rs. 40 lakhs and Rs. 25 lakhs respectively have to get their accounts audited as per the requirement of law providing a step ahead in the flexibility.

Today is the magic moment. People can make the right choice by switching from the proprietorship to the Limited Liability Partnerships. This is a fantastic new opportunity and will inevitably give a whole new profile to the MSME sector. It will be possible for the sector to reach out to venture

62 According to the 4th, Census of the Micro, Small and Medium Enterprises. The 4th, census was introduced in 2008 and relates to the reference year 2006-07 This census involved collection of data from about 24 lakh units from the registered sector alone and also from unregistered/non-EM, filed MSMEs across the country.


The then Minister for Corporate Affairs, Shri Prem Chand Gupta while answering to a question in Lok Sabha on December 12, 2008 highlighted the importance of the Act for the MSME sector.

64 As per the SME Chamber of India, approximately 30 million SME units in India face a shortage of quality financial advice. Converting to a Limited Liability Partnership structure will help MSMEs get easier access to credit from banks and other financial institutions.

65 Rule 24(8), The LLP Rules, 2009.
capital. This can be the stepping stone for partners becoming much larger industrialists and logging bigger growth.66

To leverage each other’s strengths and gain competitiveness in the world market, MSME would benefit most from LLP form, as it would allow an entrepreneur to get into the business without exposing his full assets to it. In an increasingly litigious business environment, on the one side the prospect of being a member of a partnership firm or proprietorship with unlimited personal liability is considered risky and unattractive and on the other side the corporate form is expensive for MSME. The potent tool of LLP provides a bridge between the two risks where an entrepreneur would be able to foray into a business venture without any fear of being held liable for the partner’s misconduct.

6.8 The Limited Liability Partnership: Taxation is not Taxing

The real profit for any business entity is what remains after payment of tax liability under the taxation laws. As the name implies, Income Tax is a tax on income and it is one of the forms of the Direct taxes.67 The Direct taxes mainly comprises of income-tax which is paid out of the profits of the business entity while the Indirect taxes like excise, custom, service taxes etc. are passed on to the customers.

Just like the taxation concerns of company and partnership are not addressed in the Companies Act, 1956 and the Indian Partnership Act, 1932 respectively; similarly, it was inevitable that the LLP Act would be silent on the issue of tax implications for a LLP. The taxation matters of all individuals and business entities are dealt with under the Income Tax Act, 1961. The taxation issues of a LLP in India are cleared by equating it to a partnership firm on the lines of UK and Singapore structure.68 As per the Union Budget 2009-10, LLP is treated as a firm as defined under the Income Tax Act, 1961 for the purpose of taxation meaning thereby that LLP is conferred the same status as that of a traditional partnership (as under the Indian Partnership Act, 1932). By following the flow-through system for taxation matters, the tax formula/slab does not act as a disincentive against this form of business

66 The then Minister for Corporate Affairs, Shri Salman Khurshid, spoke on the advantages SMEs can derive from the Limited Liability Partnership model while addressing the conference on “Limited Liability Partnership - A platform for SMEs”, organized by the Indian Institute of Corporate Affairs on November 24, 2009.

67 In case of Direct Taxes the burden is directly on the payer.

organization. It implies that LLP, like a partnership firm, will pay tax on its profits after
deduction of business expenditure, salaries and interest paid to partners. Partners will then be
taxed on their salary and interest receipts; whereas share in profits is exempt and it would not
be included in computing the total income in terms of the provisions of Section 10 of the
Income Tax Act, 1961. The LLP is taxable at the rate of 30%.69

Accordingly, all the provisions relating to taxation of traditional partnership firms
would apply mutatis mutandis to LLPs. This ensures that the commercial choice between
using a LLP or a partnership is not distorted by levying taxing taxation criteria. Sections 182
to 189 under Chapter XVI of the Income Tax Act, 1961 provide for the assessment of firms
and their partners. Among them Section 182 prescribes the manner in which registered firms
are to be assessed to tax; Section 183 makes similar provision in the case of unregistered
firms, and since certain concessions are permitted to the assesses in the case of registered
firms (registered with the Income Tax Act and not under the Indian Partnership Act), the
registration of firms with the Income Tax Authorities assumes importance. Sections 184 and
185 provide for the registration of partnership firms with the Income Tax Authorities. The
amended definition of ‘firm’, ‘partner’ and ‘partnership’, under the Income Tax Act is as
under:70

i) Firms shall have the meaning assigned to it in the India Partnership Act, 1932
and shall include a LLP as defined in the LLP Act.

ii) Partner shall have the meaning assigned to it in the Indian Partnership Act, 1932
and shall include:

• Any person, being a minor has been admitted to the benefits of partnership;
  and

• A partner of a LLP as defined in the LLP Act.

iii) Partnership shall have the meaning assigned to it in the Indian Partnership Act,
1932 and shall include a LLP as defined in the LLP Act.

Owing to the responsibilities shouldered on the designated partner, the designated
partner is required to sign the income tax return of a LLP or where for any reason such

69 For the Assessment Year 2013-14.
70 The Union Budget 2009-10 has amended Section 2(23) of the Income Tax Act. The Amendments were
effective from the April 1, 2010 i.e. assessment year 2010-11.
designated partner is not able to sign the return, any partner will sign it. For a LLP to be assessed as a firm under the Income Tax Act, it has to satisfy the criteria laid down under the Income Tax Act: 71

i) The LLP is evidenced by an instrument i.e. there is a written LLP Agreement.

ii) The individual shares of the partners are very clearly specified in the deed.

iii) A certified copy of the LLP Agreement must accompany the return of income of the LLP of the previous year in which the partnership was formed.

iv) If during a previous year, a change takes place in the constitution of the LLP or in the profit sharing ratio of the partners, a certified copy of the revised LLP Agreement shall be submitted along with the return of income of the previous years in question.

v) There should not be any failure on the part of the LLP while attending to notices given by the Income Tax Officer for completion of the assessment of the LLP.

The LLP can claim the following deductions: 72

i) Interest paid to partners, provided such interest is authorized by the LLP Agreement.

ii) Any salary, bonus, commission, or remuneration (by whatever name called) to a partner will be allowed as a deduction if it is paid to a working partner who is an individual.

iii) The remuneration paid to such working partner must be authorized by the LLP Agreement and the amount of remuneration must not exceed the given limits

A few tax benefits that a LLP structure enjoys above a company include the following: 73

i) 10% exemption is given in case of surcharge.

ii) Tax payment is lower than a private limited company which pays a 33.99% tax on profits.


72 When Section 184 is not complied with, the consequence is that no deduction towards interest and remuneration is allowed. This is the mandate of the Section 185.

iii) Tax will be imposed only on 40% of the income since the firm would be allowed to pay 60% to the partners as remuneration. So there will no double taxation of the income.

iv) Further there is no requirement to fill DDT.

v) Deemed dividend under Section 2(22)(e) need not be paid.

vi) No carry forward or set off under Section 79 in case of major change of ownership.

vii) Share of profits at the hands of the partners of the LLP is exempt from tax.

The Central Board of Direct Taxes announced on July 1, 2011 that all the individuals, HUFs and Partnership Firms who are liable to get their accounts audited under the Income Tax Act, 1961 will have to file their Income-Tax return online compulsorily using Digital Signature for the financial year 2010-11 and the best part is that the LLPs are covered under this notification.

6.8.1 Alternate Minimum Tax on the Limited Liability Partnerships

A new Chapter XII-BA titled ‘Special Provisions relating to certain LLP’s has been introduced in the Income Tax Act w.e.f. April 01, 2012 in order to preserve the tax base vis-a-vis profit-linked deductions. This Chapter will apply in relation to the assessment year 2012-13 and subsequent years. Under this Chapter, LLPs are now subject to Alternate Minimum Tax (AMT) at 18.5%, on the lines with MAT as imposed on the companies. However, the applicability of AMT to the LLPs is quite restricted compared to MAT in case of Companies. This is by view of the fact that the tax base in case of the LLPs would be the Adjusted Total Income computed under Section 115JC(2) of the Income Tax Act and not Book Profit as in case of Companies.

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77 Ibid. Adjusted total income is the Total Income as increased by Deductions claimed under Chapter VI-A (C), i.e., income based deductions claimed under Sections 80IA, 80IAB, 80IB, 80IC, 80ID, 80IE and 80JJJA; and Deductions claimed under Section 10AA, i.e., deduction available to Special Economic Zone Units. Therefore, unlike company, Limited Liability Partnership is not liable to pay AMT on exempt
From the assessment year 2012-13 onwards, where the regular income tax payable for a previous year by a LLP is less than the AMT payable for such previous year then the adjusted total income shall deemed to be the total income of the LLP for such previous year and it shall be liable to pay income tax on such adjusted total income (at 18% plus 3% Education and SHEC {Secondary and Higher Education Cess}).

6.8.2 **Comparison between MAT and AMT**

The following table makes the comparison between MAT and AMT:

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Points of Difference</th>
<th>MAT</th>
<th>AMT</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Applicability</td>
<td>MAT is applicable to Companies.</td>
<td>AMT is applicable to LLPs.</td>
</tr>
<tr>
<td>2.</td>
<td>Relevant Chapter and Section</td>
<td>Chapter XII-B, Section 115JB.</td>
<td>Chapter XII-BA, Section 115JC.</td>
</tr>
</tbody>
</table>
| 4.     | Trigger Point        | Companies are required to pay MAT on book profits if the income tax payable on the total income, computed under the Income Tax Act, is less than MAT. | Where the regular income tax payable for a previous year by a LLP is less than AMT payable for such previous year, Adjusted Total Income shall be deemed to be the total income of the LLP for such previous year and LLP will be liable to pay income-

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incomes like long term capital gain (Section 10(38), the Income Tax Act), dividend income (Section 10(34), the Income Tax Act), etc.


79 Supra note 75.

80 Book Profit means the Net Profit as shown in the Profit & Loss Account as increased/decreased by certain items specified under Explanation to Section 115JB.

81 Adjusted Total income means the total income computed under normal provisions of the Income Tax Act as increased by the deductions claimed, if any, under Chapter VI-A (C) or Section 10AA.
<table>
<thead>
<tr>
<th></th>
<th><strong>Rate of Tax</strong></th>
<th><strong>Tax on such adjusted total income.</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>5</td>
<td><strong>MAT Rate</strong> - 18% + surcharge @ 5% if book profit exceeds Rs. 1 crore + Education Cess @ 3% <strong>Effective Rate (including surcharge)</strong> - 19.5%.</td>
<td><strong>AMT Rate</strong> - 18.5% + Education Cess @ 3% <strong>Effective rate</strong> - 19.05% (Surcharge is not applicable to LLPs).</td>
</tr>
<tr>
<td>6</td>
<td><strong>Tax Credit (Credit for Tax)</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td>MAT paying companies can claim the credit for 10 assessment years starting from the year in which the credit becomes allowable.</td>
<td>AMT paying LLPs can claim credit for 10 assessment years starting from the year in which the credit becomes allowable.</td>
</tr>
<tr>
<td>7</td>
<td><strong>Exempt Income</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Companies are liable to pay MAT on income exempt under Section 10(38) and 10(34).</td>
<td>LLPs are not liable to pay AMT on incomes exempt from tax.</td>
</tr>
</tbody>
</table>

As no such tax is levied on the other form of business organizations like partnership firms, sole proprietorship, association of persons, etc., it is analyzed that 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 DDT.

### 6.9 Impact of the Limited Liability Partnership Act on Advocates

The impact of the LLP Act on the advocates is discussed under the following two heads:

#### 6.9.1 Maximum Number of Partners

One of the primary considerations advanced 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

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a partnership, the emergence of LLPs would overcome this restriction and would thereby ensure the unhindered growth of Indian professional firms.\textsuperscript{83} 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,\textsuperscript{84} it cannot be legally concluded that there is no limit on the membership in view of the Companies Act, 1956, which provides:\textsuperscript{85}

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 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,\textsuperscript{86} and thereby to promote the ‘company’ as a form of business organization. Thus, according to the Companies Act, 1956 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 does not expressly provide a limit on the maximum number of members,\textsuperscript{87} it only excludes the application of the Indian Partnership Act, 1932,\textsuperscript{88} and this exclusion would not allow a LLP to have more than twenty persons, as no exception has been made to Section 11 of the Companies Act, 1956 which is the relevant provision regarding this Rule. The LLP Act provides that a LLP is a ‘body corporate’ and a ‘body corporate’ means a company as defined in Section 3 of the Companies Act, 1956.\textsuperscript{89} If, however, this were to be interpreted as meaning that a 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

\textsuperscript{83} For details see: The Naresh Chandra Committee Report, 2003.
\textsuperscript{84} <http://www.llp.gov.in/FAQ.htm> Accessed on December 26, 2011.
\textsuperscript{85} Section 11(2), The Companies Act, 1956.
\textsuperscript{86} A. Ramaiya, Guide to the Companies Act, 336 (2006).
\textsuperscript{87} Section 6(1), The LLP Act, 2008; provides a minimum of two members to form a Limited Liability Partnership.
\textsuperscript{88} Section 4, The LLP Act, 2008.
\textsuperscript{89} Sections 3(1) and 2(d), The LLP Act, 2008.
the Companies Act, 1956 which is not the intended purpose of conferment of legal recognition on LLPs.90

It may, however, be argued that the LLP Act does, in fact, comply with Section 11 of the Companies Act, 1956 as it satisfies the requirement of ‘in pursuance of some other Indian law’ under Section 11 of the Companies Act, 1956.91 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, Section 11 of the Companies Act, 1956 does not specify whether ‘some other Indian law’ should have been in force before or after the coming into force of the Companies Act, 1956.92

Thus, in light of the above, one of the primary reasons for the introduction of the LLPs in India 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.

### 6.9.2 Representation by a Limited Liability Partnership 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.93 Since a LLP is a body corporate with a separate legal personality,94 a question arises as to whether a 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’.95 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

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90 Supra note 82.
91 Ibid.
92 Ibid.
93 Sections 24, 29 & 33, the Advocates Act, 1961; lays down conditions such as citizenship of India, minimum age of twenty-one years, etc., which cannot be met by a non-natural person.
94 Section 3(1), The LLP Act, 2008.

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on this argument, advocates can form a LLP and be permitted to ‘practice’ law and represent in courts.  

6.10 Limited Liability Partnership vis-à-vis Professionals / Professional Institutes and Interpretation of ‘Partnership’ for Professional Institutes

The Supreme Court in Indian Medical Association v. V.P. Shantha\(^\text{97}\) has held that occupations which are regarded as professions have four characteristics *viz.*: (a) the nature of the work which is skilled and specialized and a substantial part is mental rather than manual; (b) commitment to moral principles which go beyond the general duty of honesty and a wider duty to community which may transcend the duty to a particular client or patient; (c) professional association which regulates admission and seeks to uphold the standards of the profession through professional codes on matters of conduct and ethics; and, (d) high status in the community.

In order to target the professional bodies to extract maximum benefit out of this legislation, the upper ceiling of maximum number of partners in LLP is kept unlimited because there is no sense in keeping this limitation on our professional bodies and thus facilitation the LLP to have branches anywhere in the world. They can have business anywhere in the world.\(^\text{98}\) Persons providing services of any kind, like professionals, chartered accountants, lawyers, company secretaries, etc., are all covered under this. Any type of professional can have multiple partners in the firm. But the regulations of the regulating Act of that firm would be applicable to them. The solicitor firms cannot have chartered accountants as their partners because that particular Act restricts this. But as far as the Chartered Accountants’ Act is concerned, ‘I think that is being amended’. It has already been amended and the chartered accountants can have partners from different professions.\(^\text{99}\)

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\(^{97}\) (1995)6 SCC 651.

\(^{98}\) *Supra* note 63.

\(^{99}\) The then Minister for Corporate Affairs, Shri Prem Chand Gupta while answering to a question in *Lok Sabha* on December 12, 2008 justified the provisions of the Act stating that, ‘I think relaxation in number is a good move. I hope you would appreciate it.’

Ibid.
After globalization, Indian professionals were unable to serve worldwide as the company form of business vehicle was not worthy because of professional restrictions and partnership firm had its numerous limitations including unlimited personal. Indeed, this is the prime reason why partnership firms of professionals, such as accountants, lawyers, etc. have not grown in size to successfully meet the challenges posed today by international competition. The objective of the LLP law is quite clear. It seeks to achieve the principal benefits of both partnership and company as forms of business organization. Primarily, it aims at freeing the mind of a professional from the fear that his personal assets may be attached for the negligent and other wrongful acts of his co-partners, over which he has no control. This, the law does by providing the shield of limited liability by way of a separate legal personality. In other words, it enables professional expertise and initiative to combine with financial risk taking capacity in an innovative and efficient manner.

The Chartered Accountants Act, 1949, the Cost and Works Accountants Act, 1959 and the Company Secretaries Act, 1980 governing the three professional Institutes namely, the Institute of Chartered Accountants of India, the Institute of Cost Accountants of India (erstwhile The Institute of Cost and Works Accountants of India) and the Institute of Company Secretaries of India respectively; defines in Section 2 members who are deemed to be in practice. In all the three Acts, there is a provision for a member to be in practice when he is in partnership with certain others. In the case of the Chartered Accountants and the Cost

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105 Act No. 56 of 1980. The Company Secretaries (Amendment) Act, 2011, (Act No. 4 of 2012) received the assent of the President of India on January 8, 2012. The Act was published in the Gaz. of India, January 9, 2012, Pt. II-S.1, Ext. P.1 (No. 4). The Council of the Institute of Company Secretaries of India has issued guidelines for conversion of firms of Practicing Company Secretary into Limited Liability Partnerships and setting up of firms of Practicing Company Secretary under the Limited Liability Partnership mode.
and Works Accountants, such persons must be member of the same Institute, while in the case of the Company Secretaries; it is provided that the partnership could also be with members of such other recognized professions as may be prescribed.\footnote{General Circular No. 10/2011, dated April 4, 2011.}

At the time of enactment of the three Acts governing the professional institutes, only one form of partnership existed in India namely Partnerships under the Indian Partnership Act, 1932. Subsequently, Indian Parliament enacted the LLP Act. Though the LLPs are bodies corporate,\footnote{Section 3(i), The LLP Act, 2008.} the fact that LLPs are basically partnerships may be seen from the following definition:\footnote{Section 2(i)(n), The LLP Act, 2008.}

Limited Liability Partnerships means a partnership formed and registered under this Act.

Further, the LLP Act defines a partner as “any person who becomes a partner in the LLP in accordance with the LLP Agreement”.\footnote{Section 2(i)(q), The LLP Act, 2008.} Hence it is clear that a LLP is also a partnership and its associates are also partners.

In the context of Section 2 of the Chartered Accountants Act, 1949, the Cost and Works Accountants Act, 1959 and the Company Secretaries Act, 1980, this interpretation is also not repugnant to the context. Accordingly, it is clarified that the word ‘partnership’ wherever occurring in the Chartered Accountants Act, 1949, the Cost and Works Accountants Act, 1959 and the Company Secretaries Act, 1980 shall \textit{mutatis mutandis} be construed as including those LLPs where all the other partners are natural persons. The word ‘partner’ shall also be construed accordingly.\footnote{For details see: 2011 CLC 433 (Cal) 609.}

It is analyzed that the existing gap between the business structures in India was urgently required to be filled to enable high growth in the service sector especially that related to professionals. The LLP Act is bridging this gap to accelerate the growth rate.
6.11 Limited Liability Partnership: As Members of Stock Exchanges

LLPs are entitled to be members of stock exchanges enabling them to register as stock broker under the Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) Regulations, 1992. The Securities Contract (Regulation) Rules, 1957 do not explicitly mention ‘Limited Liability Partnerships’ as the LLP Act was brought on the statute book by the Indian Parliament of late. As per the LLP Act, LLP is a body corporate. Rule 8 Sub-Rules (4A) and (5) of the Securities Contract (Regulation) Rules provides that Limited Liability Companies and partnership firms are eligible to be admitted as members of stock exchanges. Accordingly, it can be said that the LLPs are analogous to Limited Liability Companies and partnership firms.  

The stock exchanges have to inform the member brokers / stock brokers, to disperse information on their websites and also bring changes in the relevant byelaws rules and regulations. In this regard the Capital Market Regulator, Securities and Exchange Board of India has carried out the addition to the Rule 19A of its Rules; Bye-laws and Regulations to facilitate the admission of the LLP as Member of the Exchange and the said amendment have now been notified in the Government Gazettes. The amended provision reads as under:

A Limited Liability Partnership, formed and registered under the LLP Act, 2008 shall be eligible to be elected as a member of the Exchange, subject to such terms and conditions as may be specified by SEBI and/or the Exchange from time to time.

The stock exchanges have to allot membership to the LLPs. The membership will be granted after the LLPs follow the Rules laid down in the Securities Contract (Regulation) Rules, 1957.

111 For details see: the Securities and Exchange Board of India, Circular No. CIR/MIRSD/12/2011, dated July 11, 2011 issued by Shri B.N. Sahoo, Deputy General Manager, SEBI.
112 Rule 19A (c).
113 The eligibility criterion for admission as member of stock exchange of Limited Liability Partnership is:
   a. A Limited Liability Partnership, formed and registered under the Limited Liability Partnership Act, 2008 shall be eligible to be elected as a member of the Exchange, subject to such terms and conditions as may be specified by SEBI and/or the Exchange from time to time.
   b. Such Limited Liability Partnership undertakes to comply with such financial requirements and norms as may be specified by the Securities and Exchange Board of India for company registered as a Stock Broker under sub-section (1) of Section 12 of the Securities and Exchange Board of India Act, 1992 (15 of 1992);
6.12 Limited Liability Partnerships as Statutory Auditors

An auditor is a watchdog, not a bloodhound. As per Section 266(3)(a) of the Companies Act, 1956, a body corporate is disqualified from being appointed as statutory auditor. However, the Ministry of Corporate Affairs has clarified the term body corporate for the purposes of Section 266(3)(a) of the Companies Act, 1956. By virtue of the clarification, the LLPs of Chartered Accountants are detached from the definition of ‘body corporate’ for the limited purpose of Section 226(3)(a) of the Companies Act, 1956, paving the way for the LLPs to act as statutory auditors.

6.13 Limited Liability Partnership: Foreign Direct Investment Flow

Investment has always been an issue for the business environment and foreign direct investment (FDI) is one of the measures of growing economic globalization. Since 1991, India has been liberalizing its sectors to permit foreign investment inflows. FDI is investment made to acquire lasting or long-term interest in enterprises operating outside the economy of the investor. A more comprehensive definition is explained by the International Monetary Fund as a category of international investment made by a resident entity in one economy.

c. The Partners of the Limited Liability Partnership are not disqualified for being members of a stock exchange under [clause (1) (except sub-clause (b) and sub-clause (f) thereof) or clause (3) (except sub-clause (a) and sub-clause (f) thereof) of Rule 8 of the Securities Contracts (Regulation) Rules, 1957.

d. The Partners of the Limited Liability Partnership had not held the office of the Directors/Partners in any company/ Limited Liability Partnership /firm which had been a member of the stock exchange and had been declared defaulter or expelled by the stock exchange;

e. Not less than two partners of the Limited Liability Partnership are persons who possess a minimum two years’ experience:
   (i) in dealing in securities; or
   (ii) as portfolio managers; or
   (iii) as investment consultants.

f. Apart from the eligibility conditions set out in Clause (C) above, the partners of the Limited Liability Partnership shall also comply with eligibility conditions set out in Rules, Bye-laws and Regulation of the Exchange from time to time.


Lopes L.J. observed in *Re Kingston Cotton Mill Co.*, (1896) 2 Ch 279.

The Ministry of Corporate Affairs vide its Notification No. S.O. 1152(E) dated May 23, 2011 has notified that Limited Liability Partnership which is a body corporate as per the LLP Act, shall not be treated as Body Corporate, for the purpose of Section 266(3)(a) of the Companies Act, 1956, in exercise of its powers under Section 2(7)(e) of the Companies Act, 1956. Further, Clarification regarding ‘Body Corporate’ for the purpose of Section 226(3) of the Companies Act, 1956 was given vide General Circular No. 30A/2011 (No. 02/02/2011-CL.V) dated May 26, 2011 by the Assistant Director to all the Regional Directors and all the Registrars of Companies.

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(direct investor) with the objective of establishing a lasting interest in an enterprise resident in an economy other than that of the investor. The investment is said to be direct because the foreign investor would seek to manage, control or substantially influence the operations of the entity in which it seeks to invest.\textsuperscript{116}

It is the policy of the Government of India to attract and promote productive FDI in activities which significantly contribute to industrialization and socio-economic development. FDI supplements domestic capital and technology.\textsuperscript{117}

The LLP structure somewhere lies between that of a company where FDI is permitted and that of a partnership, where FDI is generally not permitted. The LLP Act enacted in 2008 had allowed foreign national and foreign LLPs to become partners in LLPs formed in India. However, there were no corresponding provisions in the FDI Policy or Foreign Exchange Management Act, 1999 and regulations and rules made there under for foreign investment in India. Therefore, it was necessary to prescribe a regulatory policy for allowing the FDI. The Department of Industrial Policy and Promotion\textsuperscript{118} released a Discussion Paper, ‘FDI in LLPs’ in September 2010\textsuperscript{119}. After more than two years of notification of the LLP Act, and after seven months of issuing a Discussion Paper on allowing FDI in LLP, the Government of India issued a Press Note No. 1 of 2011\textsuperscript{120} approving policy on FDI in LLP. FDI in LLPs is now permitted through the government approval route in sectors/activities which are otherwise open to 100 per cent FDI through automatic route.\textsuperscript{121}

\begin{itemize}
\item \textsuperscript{116} [2012] 109 CLA (Mag.) 17.
\item \textsuperscript{117} As stated in the Intent and Objectives of the FDI Policy.
\item \textsuperscript{118} Under the aegis of the Ministry of Commerce & Industry, Govt. of India.
\item \textsuperscript{119} Dated September 28, 2010.
\item \textsuperscript{120} The consolidated FDI policy was passed by the Department of Industrial Policy and Promotion (DIPP), on October 1, 2011 suggesting certain changes. One of the key changes was FDI in Limited Liability Partnerships in India by way of insertion of a new paragraph 3.3.5, replacing the present paragraph 3.3.5. The press note by DIPP was released on May 11, 2011 allowing foreign investment in such entities in a calibrated manner.
\item \textsuperscript{121} [2012] 106 CLA (Mag.) 1.
\end{itemize}

FDI in India is permitted either through automatic route or approval route. Under the automatic route, the foreign investor is permitted to invest freely without the approval of Indian government. The investment approval is generally on a non-repatriation basis, unless otherwise stated. Under the approval route, the investment needs prior approval of Foreign Investment Promotion Board, Ministry of Finance, Govt. of India. FDI in Limited Liability Partnership is through approval route.

\textsuperscript{279}
The salient features of the Press Note approving FDI in LLP are as follows:\textsuperscript{122}

i) With the approval of the Government [approving authority being Foreign Investment Promotion Board (‘FIPB’)], FDI in LLP will be allowed, only for those LLPs operating in sectors/activities where 100% FDI is allowed under the automatic route and there are no FDI-linked performance related conditions.\textsuperscript{123} Hence, wherein for any sector performance related conditions are prescribed, FDI in LLP engaged in such sector will not be allowed even if 100% FDI is permitted under the foreign direct policy.

ii) LLPs with FDI will not be allowed to operate in agricultural/plantation activity, print media or real estate business.

iii) LLPs with FDI will not be eligible to make any downstream investments.\textsuperscript{124}

iv) Conditions relating to funding of LLPs – An Indian Company, having FDI, will be permitted to make downstream investment in LLPs only if both the company, and the LLP is operating in sectors where 100% FDI is allowed, through the automatic route and there are no FDI-linked performance related conditions. Foreign capital participation in the capital structure of the LLPs will be allowed only by way of cash considerations, received by inward remittance, through normal banking channels, or by debit to NRE/FCNR account of the person concerned, maintained with an authorized dealer/authorized bank.\textsuperscript{125} For making non-cash/intangible contribution towards the capital of the LLP, permission of Government of India will be required.

\textsuperscript{122} Press Note No. 1 of 2011 was released on May 11, 2011 allowing foreign investment in such entities in a calibrated manner.

\textsuperscript{123} Like minimum capitalization, minimum area norms, lock in, entry route restrictions, caps etc.

\textsuperscript{124} Downstream investment in general parlance means that an Indian company which is owned by a foreign company invests in another Indian company. It is an indirect FDI. This condition acts as an embargo on the conversion of the Joint Venture Companies or Wholly owned subsidiaries to make any downstream investment. The fact that Limited Liability Partnership cannot raise ECB (External Commercial Borrowings) and not make downstream investments restricts its usage in specific cases particularly in the Infrastructure sector/other high leveraged sector.

\textsuperscript{125} Thus contribution through consideration other than cash has been specifically excluded. There is no clarity on whether capital contribution through Non-resident Ordinary (NRO-When an Indian National/PIO resident in India leaves for taking up employment, etc. outside the country, his bank account in India gets designated as NRO account) can be done or not. Under Clause 32 of the LLP Act, "a contribution of a partner may consist of tangible, movable or immovable or intangible property or benefit to the Limited Liability Partnership, including money, promissory notes, and other agreements to contribute cash or property and contracts for services or to be performed". This effectively means that a partner may contribute in a Limited Liability Partnership "cash & non-cash". However, as per the existing FDI policy, issue of shares for consideration other than cash requires prior FIPB approval.
Foreign institutional investors (FIIs) and Foreign Venture Capital Investors (FVCIs) will not be permitted to invest in LLPs.\textsuperscript{126} LLPs will also not be permitted to avail external commercial borrowings (ECBs)\textsuperscript{127}.

\textit{v)} Ownership and management of LLPs – In case of LLP having FDI and a body corporate is a designated partner, than the body corporate should only be a company registered under the Companies Act, 1956 ad not any other body, such as an LLP or a trust.

\textit{vi)} Determination of designated partner – The LLP Act provides that at least one designated partner shall be person resident in India. As per \textit{Explanation} to Section 7(1) of the LLP Act, the term ‘resident of India’ means a person who has stayed in India for a period of not less than one hundred and eighty-two days during the immediate preceding one year. In terms of the Press Note, for the purpose of determination of the designated partners in respect of LLPs with FDI, the term ‘resident in India’ shall have the meaning, as defined under sub-clause (i) of clause (v) of section 2 of the Foreign Exchange Management Act, wherein a person resident in India means a person residing in India for more than one hundred and eighty-two days during the course of the preceding financial year but does not include –

\textit{a)} a person who has gone out of India or who stays outside India, in either case –

\textit{i).} for or on taking up employment outside India, \textit{or}

\textit{ii).} for carrying on outside India a business or vocation outside India, \textit{or}

\textit{iii).} for any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period.

\textit{b)} a person who has come to or stays in India, in either case, otherwise than –

\textit{i).} for or on taking up employment in India, \textit{or}

\textit{ii).} for carrying on in India a business or vocation in India, \textit{or}

\textit{iii).} for any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period.

\textsuperscript{126} It is important to note here that FIIs are allowed for portfolio investment wherein the main intention is to invest and seek gains out of it. The aim is not to create a lasting relation with the entity in which investment is made. This shows that there is a lot of uncertainty as the FIIs might not want to invest and even withdraw the principal amount throwing the Indian economy into turmoil.

\textsuperscript{127} Availing of ECB might increase the possibility of a huge debt flowing into the country which would erode the economy.
The designated partner will be responsible for compliance with the above conditions and liable for all penalties imposed on the LLP for their contravention. Any conversion of a company with FDI into a LLP will be allowed only if the company is engaged in sectors/activities where 100% FDI is allowed, through the automatic route and there are no FDI-linked performance related conditions and prior approval of FIPB/Government is obtained. The FDI policy also mentions the requirement and the timing of reporting FDI inflow. The Regional Office of the RBI should be informed within 30 days from the date of receipt of FDI.\textsuperscript{128}

The Indian economy is propelling itself in the currents of increased globalization and is capitalizing a great deal on the global investments. The present move is breaking free from the shackles of the closed and conserved economy and trying to make its mark on international footing along with other countries.\textsuperscript{129} However, the restrictions put are understandable as the government doesn’t want to get stumbled under regulatory burden and also to check the huge inflow of debt in the Indian economy.

It is analyzed that opening the gates of FDI in the entrepreneurial initiatives carried out through the LLP would certainly encourage small entrepreneurs in India to explore business ventures with foreign investment/collaboration. Also, foreign entities having project offices in India can reduce their entrepreneurial risk by using the LLP format. Further, any structure where different members want to control different segments and also bear full responsibility for their acts can prefer it. This includes infrastructure project Special Purpose Vehicles where different partners bring in different expertise into the project. It may also be considered for small enterprises not seeking access to capital markets through listing on stock exchange.


The limited liability partnership system combines the advantage of the traditional corporate structure and the entrepreneur-centric proprietary/partnership structure and will help more "marriages between brains and bank balances" take place within the small enterprise/business

\textsuperscript{128} \textit{Supra} note 116.

\textsuperscript{129} \textit{Supra} note 73.
sector, just as is supposed to happen every time a company in the organized corporate sector issues capital to the public in the form of equity shares or debentures.\(^{130}\)

It is observed that the response which the LLP corporate vehicle got came out to be the cynosure of all eyes. By the clutches of LLP law, India will be in a better position to improve its international competitiveness and join the ranks of nations that are making a successful transition to the knowledge economy.

Sooner or later, it is ideas, not vested interests, which are dangerous for good or evil.\(^{131}\)

The euphoria of the blossoming LLP is at its peak and India can, no doubt, reap tremendous economic gains by developing trade and business strategies that focus on making more effective use of its rich knowledge base to increase the overall productivity of the economy and the welfare of its subjects. In order to expedite the administrative processes, the LLPs are covered under the MCA-21 e-governance programme which facilitates paperless transactions.

6.15 Impact of Limited Liability Partnership: Numbers Speak the Truth\(^{132}\)

The LLP Act has very well attempted to respond to the needs of business environment in India. With the first LLP in India getting registered on April 02, 2009,\(^{133}\) 403 LLPs were reported to be registered till November 23, 2009; 677 were reported till February 4, 2010. As of September 18, 2010 registered LLPs were 2,266; as of September 23, 2010 the LLPs formed were 2,338\(^{134}\) and about 3,200 by December 29, 2010. As per data available on LLP


\(^{131}\) John Maynard Keynes (June 5, 1883 to April 21, 1946) was a British economist whose ideas have fundamentally affected the theory and practice of modern macroeconomics, and informed the economic policies of governments.

\(^{132}\) Figures tracked from the website of the Ministry of Corporate Affairs, Govt. of India. <www.mca.gov.in> Accessed on August 23, 2012.

\(^{133}\) Incorporated by the legal consultants ‘Handoo & Handoo’.

\(^{134}\) Only 10% of the 2,338 limited liability partnerships formed were converted and rest 90% were incorporated afresh.
portal of the Ministry of Corporate Affairs, 3513 LLP have been formed as on January 24, 2011, out of which majority of LLPs have been formed in the following sectors:135

<table>
<thead>
<tr>
<th>SECTORS</th>
<th>LIMITED LIABILITY PARTNERSHIPS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Construction</td>
<td>354</td>
</tr>
<tr>
<td>Real Estate</td>
<td>360</td>
</tr>
<tr>
<td>Wholesale Trade &amp; Commission Trade</td>
<td>242</td>
</tr>
<tr>
<td>Computer &amp; Related Activity</td>
<td>382</td>
</tr>
<tr>
<td>Education</td>
<td>107</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>1445</strong></td>
</tr>
</tbody>
</table>

And over 3,900 LLPs were floated by March 3, 2011. The number of firms converted to the LLP during the last three years, state-wise is as under:136

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Name of State(s)</th>
<th>1st year (2009-10)</th>
<th>2nd year (2010-11)</th>
<th>3rd year (01-04-2011 to 08-08-2011)</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Andhra Pradesh</td>
<td>–</td>
<td>02</td>
<td>–</td>
<td>02</td>
</tr>
<tr>
<td>2.</td>
<td>Assam</td>
<td>–</td>
<td>–</td>
<td>–</td>
<td>–</td>
</tr>
<tr>
<td>3.</td>
<td>Bihar</td>
<td>–</td>
<td>–</td>
<td>–</td>
<td>–</td>
</tr>
<tr>
<td>4.</td>
<td>Chandigarh</td>
<td>–</td>
<td>–</td>
<td>–</td>
<td>–</td>
</tr>
<tr>
<td>5.</td>
<td>Chattisgarh</td>
<td>–</td>
<td>–</td>
<td>–</td>
<td>–</td>
</tr>
<tr>
<td>6.</td>
<td>Delhi</td>
<td>06</td>
<td>07</td>
<td>02</td>
<td>15</td>
</tr>
<tr>
<td>7.</td>
<td>Goa</td>
<td>–</td>
<td>02</td>
<td>–</td>
<td>02</td>
</tr>
<tr>
<td>8.</td>
<td>Gujarat</td>
<td>01</td>
<td>03</td>
<td>–</td>
<td>04</td>
</tr>
<tr>
<td>9.</td>
<td>Haryana</td>
<td>–</td>
<td>01</td>
<td>–</td>
<td>01</td>
</tr>
<tr>
<td>10.</td>
<td>Himachal Pradesh</td>
<td>–</td>
<td>–</td>
<td>–</td>
<td>–</td>
</tr>
<tr>
<td>11.</td>
<td>Jammu &amp; Kashmir</td>
<td>–</td>
<td>–</td>
<td>–</td>
<td>–</td>
</tr>
</tbody>
</table>

136 This information was given by the then Minister of State in the Ministry of Corporate Affairs Shri R.P.N. Singh in the Lower House i.e. Lok Sabha in reply to a written question, whether the LLP Rules are functional in the country, the details of its goals & salient features; and the number of firms converted to the Limited Liability Partnership during the last three years, state-wise. <http://taxguru.in/partnership-act/salient-features-llp-act-2008-statewise-list-number-firms-converted-llp-years.html> Accessed on September 02, 2011.
As on March 14, 2011, 4085 LLPs were registered. The region-wise registration of LLPs in India as on March 14, 2011 is as under:

<table>
<thead>
<tr>
<th>Name of State(s)/U.T.(s)</th>
<th>No. of LLPs</th>
<th>Name of State(s)/U.T.(s)</th>
<th>No. of LLPs</th>
<th>Name of State(s)/U.T.(s)</th>
<th>No. of LLPs</th>
<th>Name of State(s)/U.T.(s)</th>
<th>No. of LLPs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assam</td>
<td>28</td>
<td>Chandigarh</td>
<td>12</td>
<td>Andaman &amp; Nicobar</td>
<td>02</td>
<td>Chhattisgarh</td>
<td>33</td>
</tr>
<tr>
<td>Bihar</td>
<td>27</td>
<td>Delhi</td>
<td>515</td>
<td>Andhra Pradesh</td>
<td>168</td>
<td>Goa</td>
<td>25</td>
</tr>
<tr>
<td>Jharkhand</td>
<td>17</td>
<td>Haryana</td>
<td>127</td>
<td>Karnataka</td>
<td>544</td>
<td>Madhya Pradesh</td>
<td>22</td>
</tr>
<tr>
<td>Grand Total</td>
<td>10</td>
<td>34</td>
<td>13</td>
<td>57</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

137 Supra note 132.
<table>
<thead>
<tr>
<th>State</th>
<th>LLPs</th>
<th>State</th>
<th>LLPs</th>
<th>State</th>
<th>LLPs</th>
<th>State</th>
<th>LLPs</th>
<th>State</th>
<th>LLPs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Manipur</td>
<td>02</td>
<td>Himachal Pradesh</td>
<td>04</td>
<td>Kerala</td>
<td>156</td>
<td>Maharashtra</td>
<td>1,549</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Meghalaya</td>
<td>04</td>
<td>Jammu &amp; Kashmir</td>
<td>04</td>
<td>Puducherry</td>
<td>01</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mizoram</td>
<td>01</td>
<td>Punjab</td>
<td>23</td>
<td>Tamil Nadu</td>
<td>254</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Odisha</td>
<td>13</td>
<td>Rajasthan</td>
<td>71</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tripura</td>
<td>02</td>
<td>Uttar Pradesh</td>
<td>84</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>West Bengal</td>
<td>146</td>
<td>Uttarakhand</td>
<td>09</td>
<td></td>
<td></td>
<td></td>
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</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>240</td>
<td><strong>TOTAL</strong></td>
<td>849</td>
<td><strong>TOTAL</strong></td>
<td>1,125</td>
<td><strong>TOTAL</strong></td>
<td>1,871</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Further, 4,679 LLPs were registered by May 2, 2011; 4,900 LLPs came into existence by June 5, 2011; and 4,989 by June 30, 2011. The position after the first quarter was as under:138

- Real Estate
- Computer & Related Activities
- Construction
- Education
- Wholesale trade & Commission
- Retail Trade
- Hotels & Restaurants
- Health & Social Work
- Other Business & Services

The number rose to 5,501 by July 10, 2011; 5,883 by August 8, 2011; 6,941 by November 21, 2011.139

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139 Supra note 132.
6.15.1  **Number of Limited Liability Partnerships Registered, State Wise**

The following table displays the total number of the LLPs registered state wise:\(^{140}\)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Andaman &amp; Nicobar Islands</td>
<td>2</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td>Andhra Pradesh</td>
<td>299</td>
<td>121</td>
<td>122</td>
</tr>
<tr>
<td>Assam</td>
<td>39</td>
<td>26</td>
<td>11</td>
</tr>
<tr>
<td>Bihar</td>
<td>46</td>
<td>23</td>
<td>19</td>
</tr>
<tr>
<td>Chandigarh</td>
<td>22</td>
<td>7</td>
<td>10</td>
</tr>
<tr>
<td>Chattisgarh</td>
<td>53</td>
<td>26</td>
<td>19</td>
</tr>
<tr>
<td>Daman and Diu</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Delhi</td>
<td>961</td>
<td>346</td>
<td>421</td>
</tr>
<tr>
<td>Goa</td>
<td>36</td>
<td>23</td>
<td>11</td>
</tr>
<tr>
<td>Gujarat</td>
<td>398</td>
<td>204</td>
<td>147</td>
</tr>
<tr>
<td>Haryana</td>
<td>220</td>
<td>93</td>
<td>91</td>
</tr>
<tr>
<td>Himachal Pradesh</td>
<td>13</td>
<td>4</td>
<td>8</td>
</tr>
<tr>
<td>Jammu &amp; Kashmir</td>
<td>5</td>
<td>4</td>
<td>1</td>
</tr>
<tr>
<td>Jharkhand</td>
<td>21</td>
<td>12</td>
<td>4</td>
</tr>
<tr>
<td>Karnataka</td>
<td>961</td>
<td>376</td>
<td>392</td>
</tr>
<tr>
<td>Kerala</td>
<td>273</td>
<td>128</td>
<td>108</td>
</tr>
<tr>
<td>Madhya Pradesh</td>
<td>41</td>
<td>13</td>
<td>20</td>
</tr>
<tr>
<td>Maharashtra</td>
<td>3010</td>
<td>1395</td>
<td>1341</td>
</tr>
<tr>
<td>Manipur</td>
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<td>0</td>
<td>2</td>
</tr>
<tr>
<td>Meghalaya</td>
<td>4</td>
<td>4</td>
<td>0</td>
</tr>
<tr>
<td>Mizoram</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Odisha</td>
<td>26</td>
<td>8</td>
<td>13</td>
</tr>
<tr>
<td>Puducherry</td>
<td>5</td>
<td>0</td>
<td>4</td>
</tr>
<tr>
<td>Punjab</td>
<td>45</td>
<td>22</td>
<td>20</td>
</tr>
</tbody>
</table>

A total of 8288 LLPs had been registered in the country up to March 12, 2012 and 12,448 by December 31, 2012. They comprise 11,448 fresh entities registered as LLPs, and 1000 companies and partnership firms that have been converted into LLPs.\textsuperscript{141} The figures prove the point that LLP model has great potential to act as catalyst of growth for economic development of the country. LLP can go a long way in filling the gap created due to inherent drawbacks of existing business form like company & partnership. It can further revolutionize the MSME sector by helping them in overcoming their limitation by providing easy access to capital, credit & technology, which can bring far reaching effects.

The pooling together of the resources of more than one person is necessary for the growth of commercial as well as professional ventures in contemporary times and it is pertinent to state that the stage of LLPs is set to be the root of the industrial and economic developments in the business environment.

\begin{table}[h]
\centering
\begin{tabular}{|c|c|c|c|}
\hline
State & Registered & Approved & Dissolved &
\hline
Rajasthan & 121 & 48 & 48 &
\hline
Tamil Nadu & 385 & 182 & 123 &
\hline
Tripura & 2 & 2 & 0 &
\hline
Uttar Pradesh & 180 & 63 & 90 &
\hline
Uttrakhand & 16 & 6 & 6 &
\hline
West Bengal & 297 & 121 & 141 &
\hline
\textbf{TOTAL} & 7487 & 3261 & 3172 &
\hline
\end{tabular}
\end{table}

\textsuperscript{141} The Ministry of Corporate Affairs, The Annual Report, 64 (2012-13).