The Big Picture: Limited Liability Partnership (Amendment) Bill, 2021

drishtiias.com/printpdf/the-big-picture-limited-liability-partnership-amendment-bill-2021

Watch Video At:

https://youtu.be/j9IExhZicHo

Why in News

The Union Cabinet has recently approved the **amendments to the Limited Liability Partnership (LLP) Act, 2008** vide the Limited Liability Partnership (Amendment) Bill, 2021.

Key Points

- The Bill aims to facilitate the **Ease of Doing Business** and **encourage startups across the country.**
- The amendments would **bring an equal playing field for Limited Liability Partnerships** (LLPs), **compared to large companies** which come under the Companies Act, 2013.

- Earlier, LLPs did not have the benefit of either simplified regulation or ease of practice under proprietorship as would be provided now.
- The **Companies Act, 2013** also went through a **similar amendment** for decriminalisation of various offences under the Act.

Limited Liability Partnership (LLP)

About LLP:

- A Limited Liability Partnership (LLP) is a **hybrid model** of a partnership firm and a company in which some or all partners (depending on the jurisdiction) **have limited liabilities.**
- In an LLP, each partner is **not responsible** or liable for another partner's misconduct or negligence.
- The partners in an LLP are liable only to their extent of agreed contribution to the capital.

  They are **not liable to any unauthorised actions of the other** partners.

Difference Between LLPs and Traditional Partnership Firms:

- **Liability:** In a partnership firm, all the partners are liable for any action taken by any partner and the liability is unlimited.

  However, in an **LLP, the liability extent of any partner is determined by the amount of capital** that has been invested by him/her.
- **Legal Backing:** An LLP and a partnership firm are governed by different Acts.

  LLP is governed by Limited Liability Partnership Act, 2008 and Companies Act while partnership is governed by Indian Partnership Act, 1932.
- **Entity:** An **LLP has a separate legal entity** and is liable to the full extent of its assets (liability of partners is limited) while the partnership firm does not have any kind of separate legal entity.
- **Perpetual Succession:** An **LLP observes perpetual succession** while a traditional partnership firm does not.
  - An LLP can still continue with its business regardless of possible partner changes.

    It is capable of entering into contracts and holding property in its own name.
  - A standard partnership refers to its partners as the firm and not independent of their partners.
- **Number of Partners:** Required number of minimum members is two in both the LLP and the Partnership firm.

  However, 20 is the maximum number for a traditional partnership firm.

  There are **no such boundations in case of an LLP.**
- **Partnership of Foreign Nationals: Foreign Nationals can become partners in LLP.** whereas in case of partnership firms, foreign nationals can’t become the partner.

- **Minors as Partners:** Minor can’t be admitted to the benefits of LLP.
  However, in a traditional partnership firm, minors can be admitted to take the benefits of partnership with the prior consent of the existing partners.
- **Risk Taking Capacity:** In a partnership firm, there is professional expertise but the risk taking capacity often gets undermined due to high liabilities on the partners.
  The LLP provides an alternative solution to it because it **combines the benefits of professional expertise and the risk taking capacity** of the partners and gives them the viable options.

Salient Features of the Bill:

- **Decriminalisation of Offences:** Currently, there are 24 penal provisions, 21 compoundable offences and 3 non-compoundable ones.
  - The bill seeks to **decriminalise 12 of these offences.**
    Offences that are more appropriate to be dealt with under other laws are proposed to be omitted from the LLP Act.
  - The bill amends certain sections of the Act so as to **convert offences into civil defaults** and to **convert the nature of punishments from fines to monetary penalties** as fines connote criminality.
- **In-House Mechanisms:** Offences that relate to minor/ less serious compliance issues, involving predominantly objective determinations, are proposed to be shifted to the **In-House Adjudication Mechanism (IAM)** framework instead of being treated as criminal offences.
  The **Ministry of Corporate Affairs (MCA)** is also working towards setting up an e-**adjudication platform** as part of the new version of the **MCA21 portal.**
- **Introduction of Small LLPs:** The bill proposes the creation of a class of **small LLPs** to encourage entrepreneurs.
  - These **LLPs will be subject to fewer compliances,** reduced fee/additional fee, and **smaller penalties** in the civil defaults.
    Lower compliance will incentivise unincorporated micro and small partnerships to convert into the organised structure of an LLP and derive its benefits.
  - The "small limited liability partnership" is in line with the concept of **"small company"** under the Companies Act, 2013.
- **Threshold Contribution and Turnover Size:** The threshold contribution for the partners for the LLPs have been enhanced from Rs. 25 lac to around Rs. 5 crore and the turnover size from 40 lac to 50 crore.
- **Non-Convertible Debentures:** The amendment allows the LLPs to issue fully secured **Non-Convertible Debentures** from investors regulated by **SEBI** or the **RBI**.
  It will facilitate the raise of capital and financing operations of LLPs.

- **Accounting and Auditing Standards:** The accounting standards and auditing standards for LLPs have been introduced by inserting the section 34A in the bill.
  This is done to **bring standardisation in the procedures** as the LLPs were not enjoying the kind of standard accounting systems that their counterpart companies are enjoying under the provisions of the Companies Act, 2013.

Way Forward

- **Increasing the Access of Angel Investors to LLPs:** An angel investor is a wealthy individual that agrees to invest in a small startup company that has little access to capital.
  - The LLPs have to meet certain criteria to be eligible for an angel investor.
    Even if its partners qualify for 'angel investors' in their individual capacity, the LLP might not be eligible for it.
  - Enabling the LLPs the access to angel investors by easing the norms will benefit a larger number of entrepreneurs to do their business.
- **Promoting Registrations of LLPs in India:** Currently, no two **NRIs** can form an LLP in India; one of the partners has to be an Indian resident.
  - Moreover, the **Foreign Direct investment (FDI)** in an LLP can only happen through the government route and therefore, the time required to form this partnership is much more.
  - Apart from decriminalisation of offence, it is also important that the norms for registering and establishing LLPs in India are entrepreneur-friendly and they find India a favourable place for setting up their startups.
- **Employee Stock Ownership Plan (ESOP):** It is an employee benefit plan that gives workers ownership interest in the company.
  An LLP does not allow to issue ESOPs which are nowadays used as the best tool to retain the key personnel of the company.

Conclusion

- Limited Liability Partnership is the most flexible form of business and offers a much-secured business environment to the partners.
- The latest amendments proposed through the Bill will provide coverage to a lot of small and large enterprises and provide the benefits of a company as well as traditional partnership firms.
  However, in order to provide more opportunities to the nascent businesses, more ease in the norms is required in terms of easing access to Angel investors and issuing ESOPs.