

## INVESTIGATION INTO THE AFFAIRS OF THE LLP

### INTRODUCTION

Limited Liability Partnership (for short “LLP”) can be defined as a corporate business vehicle that enables professional expertise and entrepreneurial initiative to combine and operate in flexible, innovative and efficient manner providing the benefit of a limited liability structure while allowing its members the flexibility of organizing their internal structure as a partnership. It allows the partners to restrict their liability in the firm to an agreed limit unlike a normal partnership concern. It is a form of business which does not involve the complexities of a company while at the same time allowing its Partners to be safe from the risk of unlimited liability caused by adverse actions of other partners. In view of the aforesaid protection rendered to the partners and to the LLP structure a corollary is to ensure that the activities of the LLP are not carried out in derogation to the laid down norms. It is hence important that the business of any LLP is carried out in a transparent manner in regard to its conduct and to thereby ensure compliance in all forms, be it legal, ethical or commercial. Hence Chapter IX of the Limited Liability Partnership Act, 2008 (for short “LLP Act”) empowers the Central Government to investigate into the affairs of an LLP in cases where it is of the view that the business is not being conducted in accordance with just and fair principles.

### COMMENCEMENT OF INVESTIGATION UNDER THE LLP ACT

Section 43 of the LLP Act lays down the provision concerning Investigation of the affairs of an LLP. Section 43 (1) and (2) lay down the power of the Central Government to appoint persons or inspectors competent to investigate the affairs of an LLP and report in the manner prescribed. The investigation into the affairs of the LLP takes place either by a declaration from the Tribunal<sup>1</sup> or by an Order passed by any Court<sup>2</sup> declaring that the affairs of an LLP need to be investigated. The former takes place when the Tribunal:

- On its own (*suo moto*) declares that the affairs of an LLP need to be investigated.
- Or it receives an application from at least one-fifth of the total partners of the LLP for an investigation

Section 43(3) states that the appointment of any person as an inspector under Section 43(2) can take place only if the need for such investigation arises. The circumstances under which the need to appoint such inspectors is triggered when either of the below take place:

- At least one-fifth of the partners of the LLP make an application along with supporting evidence and the necessary prescribed security amount. Section 43(3)(a)
- The LLP makes an application for investigation into the affairs. Section 43(3)(b)
- The Central Government is of the opinion that the business of the LLP is conducted with the intent to defraud or is otherwise for any fraudulent or unlawful purpose, or is oppressive or causes prejudice to any partners. Section 43(3)(c)(i)
- The affairs of the LLP are not in accordance with the LLP Act. Section 43(3)(c)(ii)
- In case the registrar, any investigating/regulatory agency receives any report thereby requiring the affairs of the LLP to be investigated. Section 43(3)(c)(iii)

Section 44 of the Act reinstates the need for evidence and security in case any application is made by the partners of the LLP for any investigation. The aforesaid requirement is necessary to satisfy good intent behind carrying out any investigation and subsequent to satisfaction of which the inspectors are appointed.

### WHO HAS THE POWERS TO INVESTIGATE THE AFFAIRS OF AN LLP AND WHAT ARE THE POWERS UNDER THE LLP ACT.

The power to investigate into the affairs of the LLP is handed over to competent persons termed as inspectors by the Central Government. The Central Government appoints such inspectors after being satisfied of the need to carry out an investigation pursuant to the circumstances discussed above.

The powers of the inspectors under the LLP Act have been prescribed under Sections 46, 47, 48 and 49 of the LLP Act.

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<sup>1</sup>Section 43(1)(a)

<sup>2</sup>Section 43(1)(b)

- **Investigation of affairs of related entities:** Section 46(1) of the Act empowers an inspector inspecting the affairs of the LLP to further investigate into the affairs of entities which presently or in the past have been associated with the LLP or any present/former partner of the LLP which in the opinion of such inspector is relevant for the purpose of investigation into the LLP. However any such investigation can be undertaken only pursuant to the approval of the Central Government<sup>3</sup> which in turn shall provide a reasonable opportunity to the partner/ entity to show cause as to why such approval shall not be accorded.
- **Inspection of books and documents:** The inspectors apart from the inspection of the books and papers of the entity are further empowered to inspect the books and papers of other entities considered necessary by him subsequent to an approval by the Central Government as under Section 47(2) of the Act.
- **Examination on Oath:** Section 47(4) of the Act empowers an inspector to examine no oath the designated partners and the partners of the LLP with the previous approval of the Central Government. Sub section (c) of Section 47(4) further empowers the Commissioner to require any of the aforesaid persons to appear before him personally for administration of an oath.
- **Notes of Examination:** The notes of examination taken down during the course of investigation is to be used as an evidence against the person examined on oath by the inspector, a copy of which is also to be supplied to such person(s).
- **Seizure of documents:** Section 48(1) empowers the to make an application to the Judicial Magistrate or to the Metropolitan Magistrate having jurisdiction for seizure of books and papers which he believes can be destroyed, mutilated, altered, falsified or secreted.
- **Returning the documents seized:** If pursuant to any such application made under Section 48(1) of the Act, any documents are seized by the inspector, the latter has a duty to keep such documents in his custody for a period not exceeding the conclusion of the investigation and thereafter return the same to the concerned entity from which the seizure took place.
- **Marking of documents:** The Inspector is empowered to place identification marks while returning documents seized by them.
- **Report:** The inspectors are required to prepare a report on the conclusion of the investigation carried out by them, a copy of which has to be further forwarded to the registered office of the LLP and other persons dealt with/ related to the report. The inspector further on directions by the Central Government may be required to prepare interim reports in respect of the same.

#### PROCEDURE FOR INVESTIGATION INTO THE AFFAIRS OF THE LLP

The procedure for investigation into the affairs of the LLP can be laid down as follows:

- i. **Initiation of the investigation:** The Tribunal either *suomotoinitiates* an investigation or it receives an application from at least one-fifth of the partners of the LLP along with supporting evidence and the necessary prescribed security amount under Section 43(3)(a) or the LLP makes an application for investigation into the affairs under Section 43(3)(b) or any Court declares that the affairs of the LLP ought to be investigated.
- ii. **Appointment of Inspectors:** Central Government appoints competent persons to act as inspectors pursuant to any of the requirements for initiation of investigation as stated above being fulfilled. [Section 43(2)]
- iii. **Approval of the Central Government:** The inspectors are required to obtain the approval of the Central Government if they wish to investigate into the affairs of other related entities and or partners or designated partners for the purpose of carrying on the investigating into the affairs of the LLP. The Central Government provides a show cause to such related entities or partners as to why such approval shall not be accorded.

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<sup>3</sup>Section 46(2)

- iv. **Investigation of the entity and its related entities:** The inspectors appointed by the Central Government carry out investigation of the entity and of other related entities associated in the past or presently with the LLP and of the partners and/or designated partners of the LLP.
- v. **Production of Documents and evidence:** The inspector has the power to call for all books and papers of the said LLP and of the books and papers concerning such related entities and/or partners as discussed above pursuant to obtaining approval of the Central Government.
- vi. **Custody of books and papers:** The Section 47(3) empowers the inspector to take in his custody the books and papers produced before him for a period of thirty days pursuant to which the same may be returned.
- vii. **Seizure of Documents:** If the inspector is of the opinion the the books and papers maybe altered, falsified, mutilated or secreted the inspector might make an application before the Judicial Magistrate or the Metropolitan Magistrate for seizure of such books and papers. (Section 48(1))
- viii. **Oath:** The Inspector may administer on Oath the persons investigated and may require personal appearance before him. [Section 47(4)]
- ix. **Notes of investigation:** The notes of investigation shall be taken down in writing and signed by the person being examined on oath and a copy of the same is further provided to the persons examined. The notes of investigation are of evidentiary value.[Section 47(6)]
- x. **Interim order:** The inspectors prepare interim reports in respect of the investigations if they are directed by the Central Government regarding the same. (Section 49)
- xi. **Final Reports:** A final report has to be prepares by the inspectors pursuant to conclusion of the investigation. These reports are either written or printed as per the direction of the Central Government. (Section 49)
- xii. **Prosecution:** If the Central Government is of the opinion from the report prepared by the inspectors under Section 49 that the person in relation to the LLP or any other related entity is guilty of an offence for which he is liable, the Central Government proceeds to prosecute such persons. (Section 50).
- xiii. **Winding Up:** If the Central government after a perusal of the report from the commissioner under Section 49 of the Act, comes to the conclusion that it is expedient to do so under by reasons referred to in Section 43(3)(c)(i)<sup>4</sup> or Section 43(3)(c)(ii)<sup>5</sup>, then the Central Government may cause a petition to be presented to the Tribunal for winding up of the LLP on the ground that it is just and equitable to do so.

## CONCLUSION

Investigation into the affairs of the LLP under the LLP Act, 2008 is similar to the investigation of Companies under the Companies Act, 1956. After incorporation when an entity like LLP commences its business, it is but natural that it will deal with outsiders also like trade creditors, bankers who may extend short term as well as long term loans and so many other persons who may get defrauded at any point of time. Even among partners, disputes may arise due to the fraudulent practices being followed by certain partners at the cost honest partners or the LLP may deviate from following the provisions of the LLP Act. At the same time, the business of LLP may be conducted for some unlawful purpose or in a manner oppressive or unfairly prejudicial to some or any of the partners. Such circumstances may call for investigation and in the absence of proper provisions in respect of investigation; the society will be affected seriously. Therefore, the aspect of investigation of affairs contained in the LLP Act was an important and well thought decision which thereby constrains the concerned persons from carrying out any fraudulent practices. These provisions hence ensure adequate protection to the outsiders when followed diligently.

<sup>4</sup> The business of the LLP is conducted with the intent to defraud or is otherwise for any fraudulent or unlawful purpose, or is oppressive or causes prejudice to any partners.

<sup>5</sup> The affairs of the LLP are not in accordance with the LLP Act