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Limited Liability Partnership as a better alternative to Incorporation

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ABSTRACT

Limited Liability Partnership Act (LLP) was introduced in India in the year 2008. It is a corporate body and has separate legal personality from its members and it amalgamates attributes of both companies and partnerships. This a conjunction of the provisions of both Partnership Act and Companies Act. The objective of Limited Liability Partnership is coherent. It protects the partners by providing the shield of limited liability in case of wrongful acts or omissions of the other partners. Furthermore a LLP is correlative to general partnership for the purposes of taxation which goes around with the flow – through system. A LLP provides ingenious and cost effective benefits in comparison with the other forms. This research paper elucidates on various aspects of Limited Liability Partnership regarding its emergence, nature, benefits, financial outlook and legal position as well as its loopholes to be met with.

Keywords – LLP, Liability, Partners, Business, Taxation, Companies

I. INTRODUCTION

Partnership is considered as one of the primeval forms of business relationships. Partnership is an arrangement between partners who have agreed to share the profit of business carried on by all of them or some of them acting on behalf of all. Over a span of time many business partnerships were supplanted with LLP. This was due to partners being under unlimited liability. Gradually, LLP proved be an alternate corporate business vehicle with versatile business organisation. A LLP is a corporate body with distinguished legal personality, along with benefits and features of both partnerships and companies. It is the sequel of these very privileges, as corporate business vehicle, have been allowed in collective pieces of legislations and jurisdictions which have been enacted to regulate them.

The LLP is a relatively new legal concept. LLP firm is a victory of comparative law initiative. The inception of this fairly new legal institution is accredited to the German law of 1892. The origin of this concept is in German Company Law known as Gesellschaft mit beschrnkter

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Haftung. A LLP is a hybrid corporate vehicle that empowers professional expertise and entrepreneurial dynamism to consolidate and work in adaptable, off centre and efficient way, giving advantages of limited liability while permitting its members the versatility for structuring their inside structure as a partnership. In case of liability of debts run up while orchestrating the business, LLP is per se is liable and not the members of the firm. Therefore, LLP's can be vouched for profit running businesses.

In the international perspective, LLP is widely accepted structure of business vehicle in countries like UK, US, Japan, Singapore etc. Indian Legislature, reckoning the international business trends regarding LLP's enacted much awaited Limited Liability Partnership Act. The requirement of partners to form a LLP is two and no maximum limit. LLP by its name has the power to be sued or sue and has the right to hold any property or dispose it.

The trend of LLP's in India can be noticed through a study results which indicates number of active and registered LLP's in economic activities precisely in service sector is 76 percent followed by industrial sector 22 percent and agricultural sector 2 percent. The flourishing hybrid corporate vehicle has made a huge impact on traditional partnership with its eclectic range of benefits. Over short period of time LLP's have become widely accepted form of business structure. The path of emergence of LLP's and its acknowledgement in the business world in a lightning makes it imperative to research and understand the patterns and changes occurred due to LLP's which has influenced the corporate business world.

II. LITERATURE REVIEW

(Gopalakrishnan R. , 2004) emphasized on the need to bring a legitimate redo in the form of limited partnership to help small scale businesses undertakings access the necessary capital. He has expressed that the experts like chartered accountants and advocates have been determined for the initiation of LLPs to accomplish a equal opportunity like their counterparts in the developed nations. They also urged some amendments to facilitate professionals from various backgrounds to frame a solitary outfit to deliver services from a solitary window.

(Lam, 2005) has given a comparative study of LLP legislation in US, New York, Wales of UK and Australia. She has analysed in detail the circumstances in a handpicked places from the viewpoint of the backdrop resulting the adoption of LLP legislation and liability capping legislation, nature of such bits of enactment, qualification and pertinence, extent of liability constraint and, lastly, guidelines and safety measures at hand to ensure the interests of the overall population. This report has considered the overall principles and conditions identifying with the activity of LLPs proficient guidelines plans, which are appropriate to the both lawyers

and different professionals, and has likewise contemplated the certain principles, assuming any, pertinent to lawyers only.

(Singh, 2007) recommended few preferable changes in the Income Tax provisions relating to taxation issues. Other than limited liability, the principle rationale that has influence on the partners of LLP is taxation.

(Bharat, 2013) reckoned LLP as a hybrid corporate business vehicle will be a boon and will guarantee a flourishing and favourable future for Indian business framework.

(Jane Frecknall-Hughes, 2013) unfolded the hike in number of registered LLP's in UK and also recognised the principle elements to adopt or not adopt LLP form of business relationship. Probed whether LLP has uplifted economic activities and plausibility of starting a business as well as classified various types of LLP's in the small and medium enterprises sector and analysed the benefits and incentives allied to LLP's.

(Varottil, 2014) elucidated on the legal, political and critical aspects of LLP Act in India, and explored few pitfalls and challenges that may alarm the success of LLP structure. The paper culminated that progression and rationale for LLP Act is highly appropriate and timely, specially given the limited literature about LLP form of business structure in India. Thakur and Gandhi deduced that small and medium enterprises seeking for business form with limited liability with less troublesome setting up and taxation protocols can opt for LLP's and also connoted that law makers should address it in order for smooth running of such business structure.

(Sharma, 2014) sets out the issues connected to concepts and implementation of LLP's. It is conclusive from the paper that in the coming future the number of LLP's in existence would be significant in the light of benefits over company and partnership form of confederation in India.

(A) Research gap

This research paper has analysed many national and international research journals, articles and studies associated to LLP's. The above reviewed literature supports the current research's need by providing information regarding various aspects of LLP. The work also examines and unwraps the progress and merits of LLP over a traditional partnership and a company. It also interprets the patterns of adopting LLP over other forms of business structures over period of time and analogize the LLP's in different countries. The gaps in these literature reviews are regarding the legal position of LLP related to taxation and convertibility in India in light of other countries and there is further scope for research. LLP is structured in a manner to meet

the needs of professionals however there is no documented work related to how LLP's benefit them. The paper intends to bridge the gaps while contributing new information regarding the above mentioned and discuss various other aspects of LLP as alternate corporate business vehicle.

(B) Objectives and issues

The business environment around the world has changed phenomenally. There has been significant impact on business world after the initiation of LLP's around the globe. Over the period of time LLP has turned out to be a preponderate form of corporation with its versatile legal structure and shield of limited liability to protect partners and blooming as an alternate hybrid corporate vehicle (Funt, 2006). The research paper aims to highlight some pivotal aspects of LLP's and its swift takeover of corporate business world.

- a) To analyse the merits of Limited Liability Partnership over traditional partnership and company.
- b) To assess the legal position of Limited Liability Partnership regarding taxation and convertibility in India.
- c) To examine how the Limited Liability Partnership benefits the professionals in India in touch with the counterparts in developed countries.

(C) RESEARCH METHODOLOGY

The current research work is empirical and exploratory in approach. Primary data and secondary data is used as the basis of the research. The primary data has been gathered by ministering a meticulous questionnaire and the secondary data has been garnered from different books, e-journals and websites. The persisting literature have been referred to structure the questionnaire.

III. RESEARCH AND ANALYSIS

(A) Distinguishing Features of LLPs.

LLP is a blend of both partnership and a company, so as to comprehend the concept of LLP's it is critical to understand the distinction between LLP's and other comparative types of business forms. When a correlation is drawn it becomes obvious that LLP's have definite edge over the other parallel structures (Saleem Sheikh, 1997).

LLP's and general partnerships.

First of all an analogy must be drawn between a LLP and a general partnership. The essential

differentiation between the two types of business structures is that an general partnership cannot relish legal status or separate legal entity from the members who represent it, however a LLP is a separate legal personality from its partners (Alberta, 1998). Precisely in terms of liability LLP is peculiar from general partnership. In a general partnership, all the partners are held personally liable for all the debts incurred by the business to the extent if the assets of the partnership is exceeded. A third party can sue all the partners jointly and severally i.e. each and every partner can be sued for any claim of full amount (Carr, 1988). On the other hand, no partner is made liable for the actions of other partners in a LLP. A partner is liable only to the extent of his share in the partnership. This is the shield of limited liability casted on the partners to protect them from being liable for the actions or omissions of the other partners (Ontario, 1997).

LLP's and limited partnerships.

A LLP is distinctive from a Limited Partnership as well. Contrary to a LLP, a limited partnership has at least one of the partners as a general partner who controls the day to day activities of the business firm and also has unlimited personal liability. Apart from a general partner, there is a partner who has limited liability for the claims or the debts that surfaces out of the business activities and decisions. In case of a LLP there is no general partner (Freedman, 2002).

LLP's and limited liability company.

The explicit differentiation between LLP and LLC isn't very clear. The rationale, possibly, is that LLC is the concept of US. But few comprehensive features can be drawn from the structure. In LLP there is requirement of at least two members in the firm, however there can be single person LLC. The scope for carrying out any kind of business or trade in general for a LLP is restricted, having said that LLC has a wider scope for the same (Ireland, 1984). For example, in California, an LLP can be involved in the act of public book keeping, the law or the work of architecture. An LLC is offered a corporate-like administrative system for many purposes including the shield against personal liability (Hillman, 2005). It is, nonetheless, typically treated as a non-corporate business association for the purpose of tax. So, it is a company for majority of the purposes apart from tax, for the cause of tax it is handled as a partnership. Though handled as corporate body, a LLP is offered a partnership-type administrative system for all the purposes including taxation. There are a limited reasons for which, it is treated as a company. Thus, LLP's are more opted form business structure considering is exclusive characteristics which benefits certain professions having their different

nature. An LLP warrants against the burden of personal liability for the unprofessional actions of negligence or felony of the other partners (Saxena, 2005). These distinguishing attributes of LLP has made it a accepted and welcomed model of corporate business structure in very short period of time. LLP is popularly practised in countries like US, UK, Singapore, Hong Kong and lately it has made its place in Indian business market as well (Sen, 2011).

IV. THE LEGAL POSITION OF LLPS IN INDIA

Taxation and Conversion strategy of the LLPs.

The LLP Act has not provided taxation mechanism of the LLPs. The Finance Bill, 2009 has framed the provisions on this account, according to which a proposal was initiated to introduce the taxation procedure for LLPs in the Income Tax Act. It has been put forward that LLPs will be taxed on lines parallel to general partnership as per Indian Partnership Act, 1932. An LLP and a general partnership is considered coequal except for the purposes of recovery (Shanbhag, 2013). There were sequential modifications in the Income Tax Act regarding words like *partner*, *firm* and *partnership* under section 2(23) to include in its meaning limited liability partnership.

In view of the fact that LLPs are regarded as tantamount to general partnerships, they are exempted from Minimum Alternate Tax and Dividend Distribution Tax. In furtherance, the Budget has also obliterated the surcharge on tax for the organisations (Agrawal, 2011).

However, provided that an LLP is non-resident as per the IT Act and its superintendence is completely outside India, LLP would keep up with 30% tax as well as the applicable cess. All these attributes make LLP an appealing modus operandi of business as far as tax is regarded. Nevertheless, LLP being a blend of company and partnership it would have been much better if pass through stature was conferred to it for the purposes of tax (Gilson, 1991).

The Naresh Chandra Committee recommended that LLPs should be bestowed with pass through status. According to this mechanism LLPs won't be taxed in anyway, the partners shall minister the tax burden completely. The aforesaid strategy was followed for the purposes of taxation of a partnership till 1993.

The taxation treatment of LLPs at par with general partnership has caused ruction to prospective foreign investors who would be subject to double taxation in reference to income accrued from the LLP which is incorporated in India because the profits of the LLP are accountable to tax in India and when the profits are shared among the partners, such profits are subject to tax in the pertinent jurisdiction of the residence of the partner (Klein, 1995). These

set of circumstances are not tackled with, in double taxation avoidance agreements entered by India with different countries around the globe. Thus, partners wouldn't be able to relish the share of profit due to tax-structuring. Yet, there are tax benefits up for grabs to LLPs, such as exemption from presumptive tax and as mentioned earlier dividend distribution tax as well as minimum alternate tax (Singhania, 2013).

In USA, LLPs have a pliable taxation system in which partners can decide whether the tax is borne by the partners themselves or the firm. Besides, *pass through concept* also is embraced in USA. Further, even in UK pass through system has been in force and LLPs enjoy the pass through status. LLPs in India are in similar lines to other countries except for the taxation strategy which is unique in India (Gandhi).

A supplemental section 167C has been instituted in the IT Act, according to which each and every partner of the LLP is jointly and severally accountable for the purposes of tax to paid on behalf of the LLP for the term during which he was partner, except for the non-recovery of the taxes can't be accredited to sheer neglect, misconduct or infringement of duty of his part. The aforementioned is regardless of any provision in contrary given under LLP Act. Despite the fact that section appears to be in friction with the LLP Act, as per that partners aren't made liable personally for the liabilities of the firm, it appears to be in compliance with the prevailing provisions of section 179 of the Income Tax Act, that projects a identical liability on the directors of a private company in liquidation (Singh P. K., 2007).

A crucial prerequisite for the conversion of private or unlisted public company to an LLP is that there shall be no security interest persisting on the assets or be in force during period of application. It is cumbersome for almost all the companies to be in a position where there is no persisting security interest on any of the assets. Another significant point to be concerned about is, while one can convert to an LLP from a firm or company, there aren't provisions to adjudicate on converting back into a company or partnership (Repudaman, 2012).

V. PROFESSIONS AND THE INDIAN LLPS.

In an escalating litigious environs, it is genuinely a risky situation to be a member of a partnership firm with extensive and unlimited personal liability and therefore it is unappealing. As a matter of fact this is the principle cause that the partnership firms of white-collars, like lawyers and accountants etc haven't advanced in size to triumph to meet the challenges postulated today by global competition (Likierman, 1989).

So, there's a necessity for new flanged corporate entity as a substitute to traditional partnership with limited liability and amenable business sphere to organise and function in a effective

system. Professionals, other service providers and entrepreneurs can meld together and work in an efficient manner to compete with multinational competition (Viswanathan, 2006).

Multiple professionals in India, like lawyers, CA and doctors are impeded from practicing through the companies. LLP as a hybrid corporate structure is specifically beneficial for rendering such professional services. Hence, it is an apt form of business structure for partnership amongst professionals who are heretofore administered like CA, CS, advocates, doctors, engineers and architect etc. specially auditors and accountants they are not entitled to function as a company (Morris, 1997).

LLPs are proved to be efficacious for particular professionals who can't use the corporate structure and who are in the view that partnership structure is not feasible, so as to appear to be in practise outside India. A LLP is undoubtedly beneficial because of its relatively low cost of formation, fewer compliance desideratum, simplified management and operation as well as uncomplicated system of winding up and dissolution also no minimum capital contributors are necessary (Alberta T. L., 1995).

Section 40(b) of the IT Act, which provides for reductions on the payment of interest and emoluments to the partners of the firm, has been amended now to unvaryingly apply to non-professional firms and the professional firms. LLPs are the recipients of the alterations, therefore making it an appealing business structure for professionals forming an association.

(A) Observations

Chart -1 : Awareness about Limited Liability Partnership.

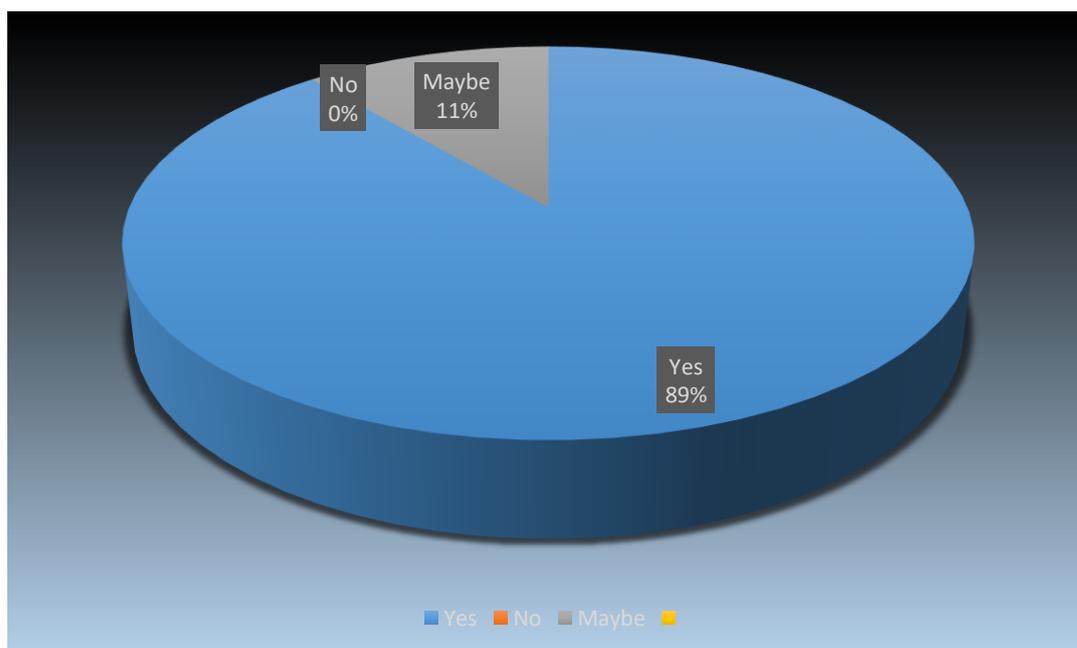


Chart 1 indicates the awareness regarding Limited Liability Partnership. As per the above observations, 89 percent of the respondents are aware about the LLPs as a form of business structure which is followed by 11 percent of the respondents who are not completely well informed about LLPs and there are no respondents who are absolutely unaware about the concept of LLPs. It is conclusive from the observations that majority of the respondents are well acquainted with the idea of LLPs.

Chart – 2 : LLP as a better form of business structure compared to traditional partnerships and companies.

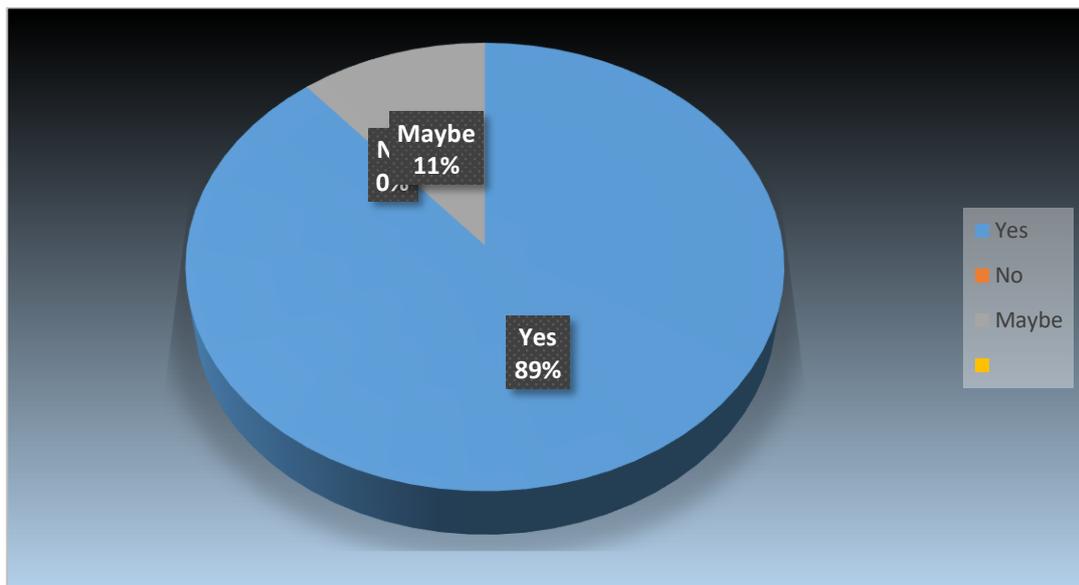


Chart 2 demonstrates that LLP is better alternative to traditional partnerships and companies. According to the observations, 89 percent of the respondents agree with the notion that LLP is a better alternative to incorporation followed by 11 percent of respondents who are uncertain as to which form of business structure is the better form. 0 percent of the respondents i.e. none of the respondents believe that LLP is not a better alternative to traditional partnerships and companies. Considering the dominant part of the pie chart it can culminated that introduction of LLPs has proved to be a useful hybrid corporate vehicle.

Chart –3: Initiation of LLPs has aided professionals to compete their counterparts in developed countries.

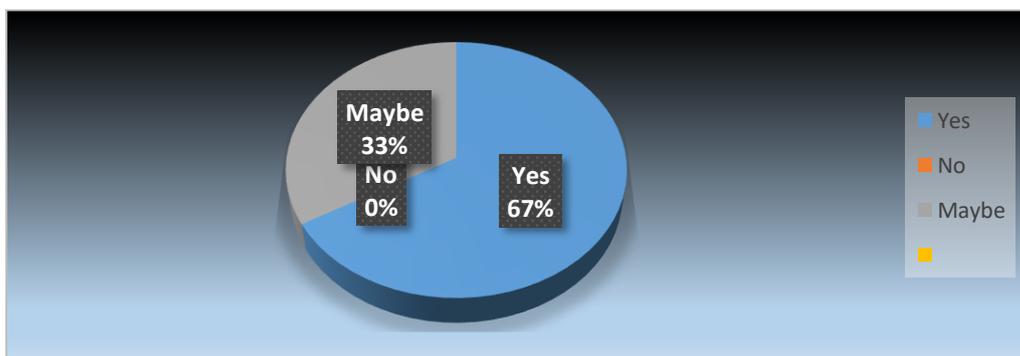


Chart 3 manifest the point that introduction of LLPs have helped the professionals in India to have a level playing field with the counterparts in the other countries. Being in the line with the observations, 67 percent of the respondents agree that LLPs have aided the professionals to compete with other counterparts followed by 33 percent of respondents who are not in conformity with that idea mentioned above. None of the respondents (i.e. 0 percent) are of opinion that LLPs have not supported professionals. It can deduced from the above information that more than half of the respondents are of belief that it has backed professionals to compete across the globe and a minor part of respondents aren't clear about that view.

Chart – 4 : Growth in service sector due to LLP and opportunity for professionals to render services across globe.

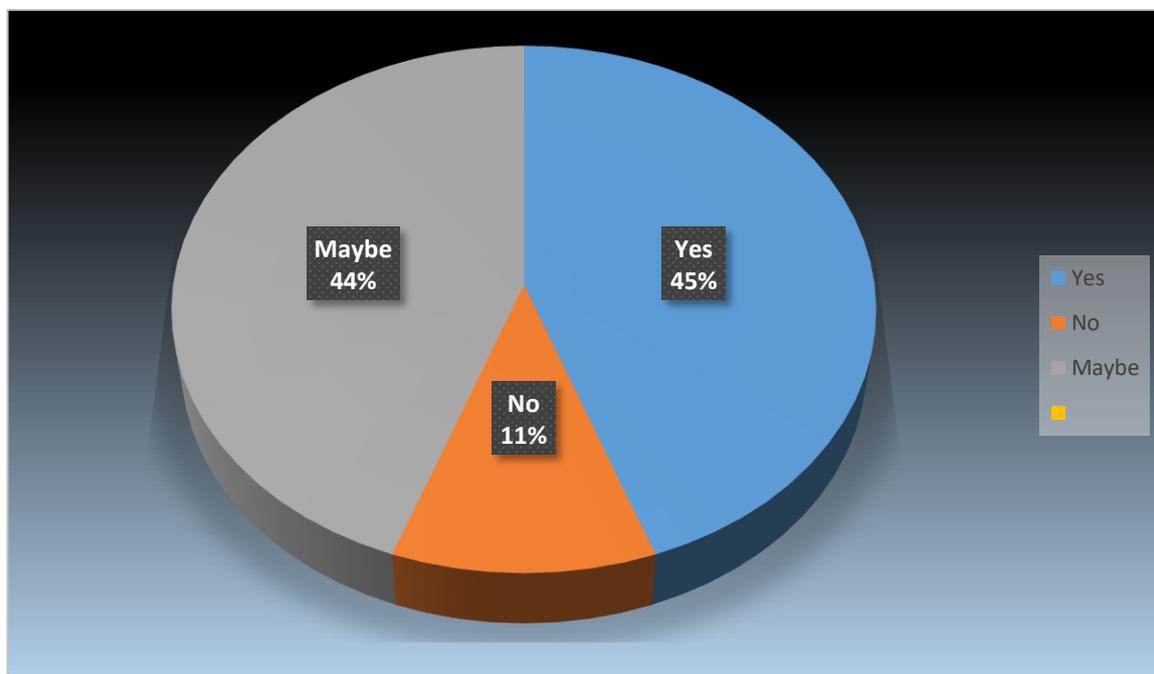


Chart 4 exhibits the responses regarding growth in service sector after introduction of LLPs and opportunities available to professionals to extend such services worldwide. IN accordance with the above observations, 45 percent of respondents acknowledge that LLPs have contributed to growth of service sector as well as LLPs have aided professionals to widen their ambit to provide services. 44 percent of the respondents are uncertain about the statement mentioned in the question followed by 11 percent of respondents who disagree with the statement in the question. It can be concluded that there is no clear majority as to whether LLPs have increased the economic growth and supported professionals to augment their services across the board.

Chart – 5 : Efficiency of taxation strategies to govern the LLPs

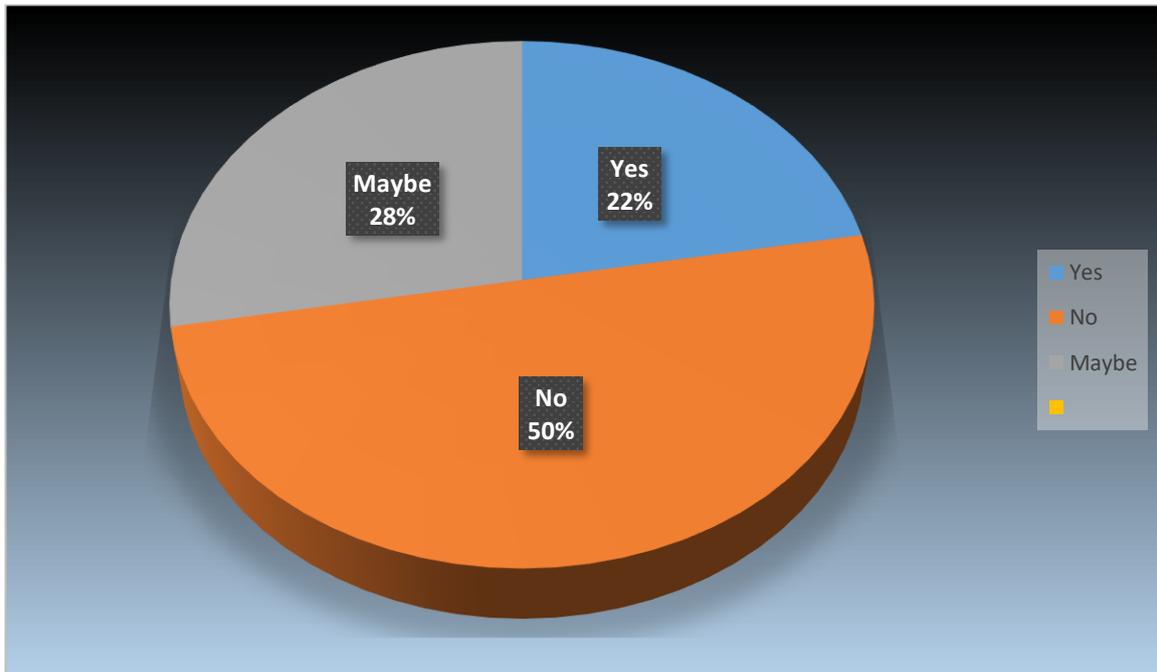


Chart 5 illuminates about the efficiency of taxation system to govern the LLPs. As per the observations, 22 percent of the respondents agree that the current strategies are efficient and viable followed by 50 percent of the respondents who do not agree with taxation scheme and 28 percent of the respondents are not sure about the prevailing strategies. It can be inferred from the above information that precisely half of the respondents aren't satisfied with strategies and therefore it can be taken into consideration that there is requirement of amendments regarding the taxation system.

Chart – 6 : To address the discrepancies regarding provisions related to conversion of LLPs back to their initial form.

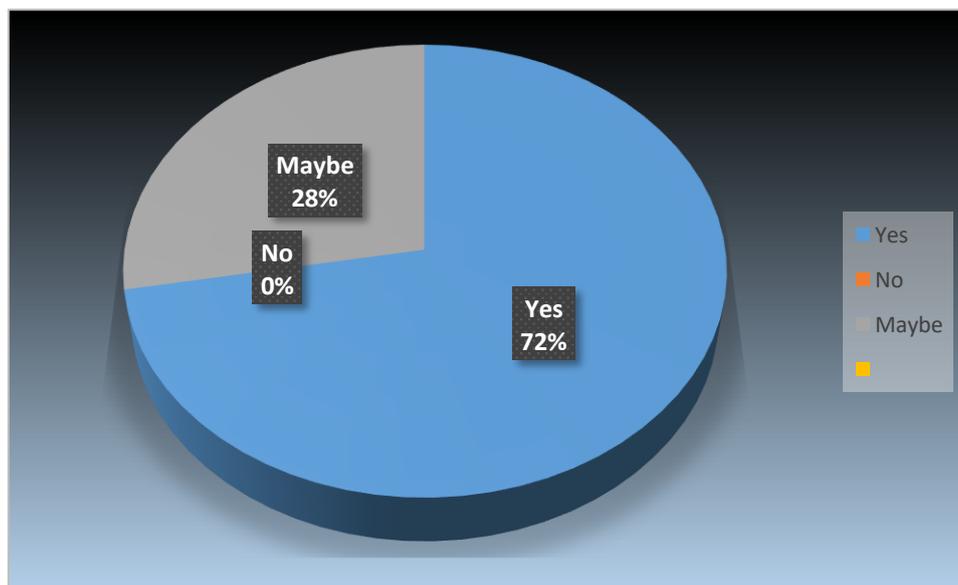


Chart 6 shows that there is a need to address the discrepancies with respect to conversion of LLPs back to their initial form. As depicted in the chart, 72 percent of the respondents are of the belief that the existing inconsistencies are to be tackled precisely, followed by 28 percent of the respondents who are unassertive regarding the issues subsisting in the current provisions and none of the respondents are under impression that problems present are not worth addressing it.

VI. CONCLUSION AND SUGGESTIONS

This paper has attempted to furnish a methodical analysis on the concept of LLP. Primarily, the paper highlights the benefits availed by a LLP in comparison with the traditional partnership and company. The next part elucidates on conversion and taxation mechanism related to LLPs as well as the advantages that are attainable by the professionals through LLP firms. Business organisations should have an overt but accountable environ to function, in order to augment the resource utilisation. A positive move undertaken in this regard was the introduction of LLPs in India. The concept LLP has been widely accepted form of business structure in countries like USA, UK, Australia and Germany even before it was introduced in India. The LLP system is blend of partnership and company with plenty of benefits, thus making it an attractive form of business. LLPs are acknowledged as the world's best practise, it is conclusive from the advantages it avails to the partners and specially professionals.

Suggestions

- The provision regarding conversion of LLPs back to initial form should be cleared.
- The position with respect to tax liability after converting to an LLP should be precise.
- The investments accorded by the foreign partners governed under FEMA, 1999 ought to be illuminated.

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