

*E-Circular dt Friday, January 30, 2009*



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*Future-ready*



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Hello Members,

**"Compulsory Requirement of Appointment of Company Secretary,  
Minimum limit increased"**  
**from Rs. 2 Crores → Rs. 5 Crores "**



- Important News → A Change in Legal Position.
- The Government has passed the Notified the changes in Companies Rules.

#### **Details ?**

Earlier every company with a Paid up capital of Rs. 2 Crore or more had to keep on its rolls, a Full Time Company Secretary. Now this has been increased to Rs. 5 Crores.

#### **Benefit to some FSIA members ?**

The FSIA member units, that have broken the barriers of "Small", and started their march towards the "Medium and Large" Industry, ..... The MSME units, with Paid up capital in the range Rs. 2 Crores to Rs. 5 Crores are free from this requirement.

It saves them a recurring cost.

However, if we see it from another angle, these companies will lose the benefit of having a professional within their ranks. (Though they can, if they so desire).

#### **When Did this happen ?**

This is a very recent change . This was notified by the Government on 20-Jan-09. For the Text of the Notification, you may click on the link below

[http://mca.gov.in/MinistryWebsite/dca/notification/pdf/GSR11\(E\)\\_20jan2009.pdf](http://mca.gov.in/MinistryWebsite/dca/notification/pdf/GSR11(E)_20jan2009.pdf)

(Vide COMPANIES (APPOINTMENT AND QUALIFICATIONS OF SECRETARY) AMENDMENT RULES, 2009)  
NOTIFICATION NO. G.S.R. 11 (E), DATED 5-1-2009

## Second Important news

"The Limited Liability Partnership Act,2008"  
Has been passed,  
And has received the Ascent of the President of India

This Act, introduced (long ago) in 2006, has finally been passed. And also been signed as an Act, by the President of India.

The Limited Liability Partnership Act 2008 has been notified in the official Gazette of India on January 9, 2009. But the relevant rules have not been notified as yet and are in preparation so the Act has not been fully implemented. The Minister of Corporate Affairs is striving hard to get the first LLP in India be incorporated on 1st April 2009.



### **Background for FSIA Members**

- Many of the FSIA members are units in the "Partnership" Model.
- However it has a demerit of "Unlimited Liability".
- With the recession fears high on the horizon, and the repayments to creditors and Bankers becoming a nightmare to some, industry must consider the LLP quite seriously.

### **The Theory ( the benefits)**

- A limited liability partnership (abbreviated as LLP) has elements of partnerships and corporations.
- In an LLP **one partner is not responsible** or liable **for another partner's misconduct** or negligence. This is an important difference from that of a partnership. In an LLP, all partners have a form of limited liability for each individual's protection within the partnership, similar to that of the shareholders of a corporation.
- However, unlike corporate shareholders, the partners have the right to manage the business directly. As opposed to that, corporate shareholders have to elect a board of directors under the laws of various state charters. The board organizes itself and hires corporate officers who then have as "corporate" individuals the legal responsibility to manage the corporation in the corporation's best interest. An LLP (may) also contains a different level of tax liability than a corporation.
- As a result the LLP is more suited for businesses where all investors wish to take an active role in management, yet with limited liability.



The salient features of the LLP Act, 2008 are as under:-

1. The LLP has an alternative corporate business vehicle that would give the benefits of limited liability but allows its members the flexibility of organizing their internal structure as a partnership based on an agreement.
2. The LLP Act allows the benefit of LLP structure to certain classes of professionals only and would be available for use by any enterprise which fulfills the requirements of the Act.
3. While the LLP has a separate legal entity, liable to the full extent of its assets, the liability of the partners would be limited to their agreed contribution in the LLP. Further, no partner would be liable on account of the independent or un-authorized actions of other partners, thus allowing individual partners to be shielded from joint liability created by another partner's wrongful business decisions or misconduct.

4. LLP shall be a body corporate and a legal entity separate from its partners. It will have perpetual succession. Indian Partnership Act, 1932 shall not be applicable to LLPs and there shall not be any upper limit on number of partners in an LLP unlike an ordinary partnership firm where the maximum number of partners can not exceed 20.

5. The taxation of LLPs shall be addressed in the Income Tax Act, 1961 which regulates taxation of all form of entities. → Budget changes expected this month. ( when the Union budget is announced on 28<sup>th</sup> Feb 2009 )

6. Provisions have been made for corporate actions like mergers, amalgamations etc.

7. While enabling provisions in respect of winding up and dissolutions of LLPs have been made, detailed provisions in this regard would be provided by way of rules under the Act.

8. The Act also provides for conversion of existing partnership firm, private limited company and unlisted public company into a LLP.

9. Nothing Contained in the Partnership Act 1932 shall effect an LLP.

10. The Registrar of Companies (ROC) shall register and control LLPs also.

11. The governance of LLPs shall be in electronic mode in the successful model of the present Ministry of Corporate Affairs Portal.

<http://mca.gov.in/MinistryWebsite/dca/actsbills/pdf/LLP Act 2008 15jan2009.pdf>



"All those in favour of dropping 'limited liability' for 'no liability'."

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<p><b>Monthly TAX Payable</b></p> <table border="1"> <thead> <tr> <th>Month</th> <th>Sales Tax</th> </tr> </thead> <tbody> <tr><td>APR</td><td>494,904</td></tr> <tr><td>MAY</td><td>618,562</td></tr> <tr><td>JUN</td><td>276,703</td></tr> <tr><td>JUL</td><td>156,611</td></tr> <tr><td>AUG</td><td>81,020</td></tr> <tr><td>SEP</td><td>477,196</td></tr> <tr><td>OCT</td><td>521,099</td></tr> <tr><td>NOV</td><td>195,573</td></tr> <tr><td>DEC</td><td>209,368</td></tr> </tbody> </table>	Month	Sales Tax	APR	494,904	MAY	618,562	JUN	276,703	JUL	156,611	AUG	81,020	SEP	477,196	OCT	521,099	NOV	195,573	DEC	209,368	<p>Graph's of <b><u>Sales Taxes due</u></b> at end of various months</p> <p><b><u>And</u></b></p> <p>Monthly Salary Expense</p>
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