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Professionals LLP limited liability Regime for Professionals: the Business and Ethical Issues.

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ABSTRACT

Prior to the millennium era, it was an entrenched policy in Malaysia that certain professional are not allowed to carry out their businesses in the form of companies. As an example, lawyers in this country are only allowed to carry out business either through sole proprietorships or partnerships structure. In both business entities, the lawyers do not enjoy any protection of limited liability, either for professional negligence or business debts. The auditor and accountants are also confined with the same rule. Despite the rigidity of the governing rules, the law acknowledged the importance of the professionals to carry out their private practices and businesses. A new business entity in the Southeast region known as limited liability partnerships (LLP) has been introduced in Singapore in 2005; which allows the regulated professionals to enjoy limited liability without having to set up a company. In Malaysia, although it is not yet final, two consultation documents had been published by the Companies Commission of Malaysia (CCM); in 2003 and in 2008 indicated a high possibility for LLP to be offered in Malaysia. A draft bill of LLP had also been released by CCM in March 2009 to the professionals’ bodies such as Bar Council and MAICSA for feedback. This paper intends to highlight main attributes of LLP which allows professionals to enjoy limited liability while carrying out the business. It is contemplated that the move shall affect not only the liability regime but also the ethical issues and third parties protection. Main objective of this paper is to discuss the ethical issues which may arise out of the limited liability regime offered via LLP. Research methodologies adopted for this paper are statutory and case law analysis.

Key word:

Introduction

In Malaysia, the business vehicles are merely confined to sole proprietorships, partnerships and company. However, a new business vehicle known as Limited Liability Partnership (LLP) is perceived to be introduced in Malaysia soon as the LLP Bill 2011 has been scheduled for its second and third reading in the 2011 Parliamentary session.

LLP is a fascinating business vehicle as it is a hybrid of a company and a partnership. Most interestingly, its legal status could be either a legal entity which is not a body corporate or an entity of a body corporate. In the United Kingdom, for example, its off shores’ LLPs, such as in the Isle of Jersey’s, the LLPs have the status of a legal entity which is not a body corporate whilst in the mainland; the UK LLPs have the status of a body corporate. In the South East Asia region, at present LLPs are only available in Singapore and Labuan, i.e. the Malaysian offshore. Both LLPs have the status of body corporate.

LLPs are seen as alternative business vehicles for professionals in Malaysia who are not allowed to carry out business in the form of companies, such as lawyer accountants and auditors. Such restriction is provided by the professional’s regulatory bodies such as Bar Council and Malaysian Institute of Accountants. This paper shall focus on the lawyers and accountants as these professions are perceived to be most inclined towards LLPs once it is introduced in Malaysia.

Business Restrictions on Professionals:

In Malaysia, the main regulation which governs the accounting profession is the Accountants Act 1967. Under section 18 of the Accountants Act 1967 it is clearly stated that:

Without prejudice to any other provisions of this Act or rules or by-laws no member shall -
(a) allow any person not being a member to practice in his name as a chartered accountant;
(b) be a director or a shareholder in a company incorporated under the Companies Act, 1965, or any other written law, being a company which carries on a business of auditing, nor shall he use a trade or association name under which to practise the profession;

(e) in any way, practice as a chartered accountant or licensed accountant other than (i) in his own name;

(ii) in the name or names of his partner or partners being chartered accountants or licensed accountants; or

(iii) in the name of a firm existing at the time of the coming into operation of this Act or formed thereafter provided that the partners in Malaysia are eligible to be registered as chartered accountants or licensed accountants;

Although the above provision does not specifically provides for restriction for accountants to set up practices as a company, it is clear that the provision does not provide company as a medium for accountants to carry out their business or practices.

The exclusion of company structure as a business vehicles for accountants is also observed under the Malaysian Institute of Accountants (Membership and Council) Rules 2001[P.U.(A)343/2001] (as amended by the Malaysian Institute of Accountants (AMENDMENT) RULES 2002 [P.U.(A)258/2002]), whereby Rule 2 provides that “member in public practice” means a chartered accountant or licensed accountant who, as a sole proprietor or in a partnership, provides or is engaged in public practice services in return for a fee or reward for such services otherwise than as an employee. Again, despite that the rule does not expressly stated the restriction for accountant to practice as a company, the Rule clearly stated that the medium in which the practice can be carried out is through sole proprietorships or partnerships.

As for the lawyers, the main regulation which governs the profession is the Legal Profession Act (LPA) 1976. Other than the LPA1976, the lawyers are also regulated by rulings and by-laws. The Bar Council issues Rules and Rulings pertaining to the practice, conduct and etiquette of Advocates and Solicitors (collectively “Rulings”). These Rulings are generally made ad-hoc as a result of specific queries made by Advocates and Solicitors or members of the public. Although the LPA is silence on the business structure to carry out legal practices, Chapter 1 of the Rulings, clause 1.01(l) clearly provides that all references to a “firm” or a “law firm” mean a firm of Advocates and Solicitors whether a partnership or a sole proprietorship. The exclusion of company structure from references to a firm clearly indicates that the business of legal practices can only be carried out in the form of sole proprietorships or partnerships.

According to (DP Rajah, 2006), the restrictions on the types of business structures allowed in the legal profession not only affect a legal firm’s competitiveness but can also have residual affects on the cost and access to legal services. It is observed that in the New South Wales, Australia, Singapore and in the UK where the incorporated business models are allowed for lawyers, the practitioner’s liability to the client and to the profession remains unchanged as the practitioner remains personally liable for any misconduct and for any personal liability in tort or contract.

Development of Business Vehicles:

It is observed that the development of business vehicles mainly concentrates on the merit of limited liability and tax status.

Limited liability:

The development of business vehicles in relation to limited liability is very obvious in partnerships structure amongst the criticism of the unlimited and joint liability principle (Joanna Gray, 1997). From merely the traditional form (general partnerships), the structure has been expanded to include limited partnerships and limited liability partnerships (LLP).

A limited partnership differs from a general partnership in the role and responsibilities of the partners (Terence Prime, 1995). Limited partnerships comprise of the general and limited partner. The general partner controls the limited partnership's day-to-day operations and is personally liable for business debts. Limited partners on the other hand, have minimal control over daily business decisions or operations and in return, they are not personally liable for business debts or claims.

Another fascinating structure which is said to be an extension of partnership structure is limited liability partnerships (LLP). However, to conclude that the LLP is a partnership structure is not very accurate as it is actually a hybrid creature of a company and a partnership. It has a separate legal entity and therefore enjoys most of the attributes of a company such as limited liability, right to own property and right to take legal action. The external obligations of LLP are also similar to requirements applicable to companies such as audit and disclosure requirements. However, as regards to its internal regulation, LLP has the flexibility of a partnership, as the members are given the right to decide through the members’ agreement.
Despite the similarities in the external and internal regulations, there are three types of LLP. The first type of LLP has the status of a partnership, for example the US LLP, the second type is the LLP which is a legal entity but not a body corporate, for example the Jersey LLPs whilst the third type of LLP has the status of a body corporate, for example the Singapore LLP and the UK LLP.

For the company structure, the application of limited liability is apparent as it is an inherit attributes of a body corporate. However, in the United States of America (US), a country where the business vehicles went through a vigorous expansion, the company structure has been extended to include S-Corporations and limited liability companies (LLC). Both entities have the status of a body corporate but different tax status. For the S-corporation, it has similar attributes, external responsibilities and internal regulations of a company but the members have the option to pay income taxes similar to sole proprietor or a partner. The LLC structure is generally similar to the UK LLP but in the US, members of LLC can choose for the LLC to be taxed as an entity or profits are passed through to the partners and taxed on their personal income tax returns.

**Tax Scheme:**

From the aspect of taxation, both limited partnership and LLPs works like a general partnership in that it is a pass through operation with profits passing through to the partners or members who then include their allocated income on their personal tax returns.

For the S corporation, it is subjected to the Subchapter S of the Inland Revenue Code which entitled the members to pay income taxes similar to sole proprietor or a partner. In this structure, all business profits go to the owners who will report them as personal tax returns and the company will not be subjected to any further tax although it still has to file an informational tax return similar to a partnership.

The LLC, on the other hand has a special tax status which the IRS calls a "pass-through entity," like a partnership or sole proprietorship. All income of the LLC is passed directly through to the personal returns of the members. When property is transferred to the LLC or distributed from it, there are no separate tax consequences. The only tax paid is on the income earned, which is reported on the owner's personal tax return. This system avoids the complications and potential double taxation that plagues the corporate format.

**Limited Liability Partnerships (LLP):**

LLP is a business structure that combines the best features of partnerships and company. It enjoys all the attributes of a body corporate, namely, separate legal entity, limited liability, perpetual succession and legal entity but at the same time retaining the internal flexibility of a partnership.

There are three types of LLPs; the first one is LLP with the status of a legal person but not a body corporate, the second one is LLP with the status of a body corporate and the third one is LLP with the status of a partnership. For the purpose of discussion for the first and second types of LLPs, references shall be made to the United Kingdom where both types of LLPs are available.

**The Jersey LLPs.**

The Isle of Jersey is a constituent of the United Kingdom but with a crown dependency enjoying substantial measure of autonomy (Phillip Morris et al, 1997). The Isle of Jersey possesses a full- fledged court system (with the right of appeal to the Privy Council), its own unicameral legislature (the States) and an Executive branch of government which takes the form of de facto groups of insular officials and presidents of principal committees of the States. The principal sources of law for the island are the Jersey common law, which originated from the customary law of the Duchy of Normandy. Legislation enacted by the Westminster only applies to Jersey if expressly stated or if it does so by necessary implication.

Other than having powers of self-government, Jersey which is subject to the Community law enjoys free movement of industrial and agricultural produce but is otherwise exempted from most of the EC law, including free movement of persons and tax harmonization. Consequently, Jersey is able to thrive as an offshore financial center with a fiscal structure and portfolio of legal vehicles attractive to manage funds and wealthy individuals (Phillip Morris et al, 1997).

The Limited Liability Partnerships (Jersey) Law was enacted in 1997 and revised in 2008. Similar to the UK LLP, the Jersey LLP has a separate legal entity, distinct from its partners. However, different from the UK LLP, it does not have the status of a body corporate (Phillip Morris, 1997). The Jersey LLPs are not required to appoint an auditor or to have its accounts audited. However, the LLPs are required to keep ten years of accounting records which are sufficient to show and explain its transactions and are such as to disclose with reasonable accuracy at any time its financial position.

Pertaining to limited liability, the Jersey LLP Law 1997 clearly provides that the LLPs shall be liable for any debt or loss of the business. A partner or former partner in a limited liability partnership shall not be liable
for any debt or loss of the business. As regards, the internal regulation, the Act clearly provides that the rights and duties of the partners in the LLPs shall be determined by the partnership agreement. Partners in the LLPs are only agent to the LLP and not to other partners.

**The Body Corporate LLP:**

The second type of LLP is the LLP with a body corporate status. Examples of this LLP are the UK and Singapore’s LLPs. An interesting feature of the second LLP is that although it has the status of a body corporate; its internal regulation is via partners’ agreement, which is akin to a partnership agreement. This means partners of LLP may adopt any forms of internal arrangement, which they prefer. Nonetheless, when it comes to external obligations, LLP is subjected to similar requirements applicable to companies such as reporting and disclosure requirements. In Singapore, the LLPs are only required to submit annual insolvency/solvency report but there is no obligation to lodge the audited account report to the Registrar.

One important principle to be highlighted is that despite adopting the internal regulation, which is similar to a partnership, the UK LLP Act 2000 and the Singapore LLP Act 2005 clearly provides that the partnership law is not applicable to the LLP whilst the company law is expressly (unless otherwise provided) applicable to the LLP.

Another interesting feature of the incorporated LLP is its tax status. Although it has the status of a body corporate and subjected to the company law, the LLP is treated as a partnership for tax purposes (Linda L. Ng, 2009).

**LLPs with a partnership status:**

This type of LLPs is available in the United States of America (US) whereby the LLPs are also regarded as a partnership. Interestingly, despite the partnership status, the US LLPs are recognized under the law as a legal entity; distinct from its partners. This means the LLPs incur its own liability and provides limited liability for its partners.

Due to the status of a legal entity, partners of LLPs are only agent to the firm and not to one another as applied in English and Malaysian partnerships. As regards the internal regulations, the LLPs are governed by the partnerships agreement similar to general partnerships. However, the partnership agreement shall not exclude certain rights which are provided under the Act.

The US LLPs are treated as a “pass through” entity by the Inland Revenue Services (IRS) whereby it passes through its taxation to its partners. Each partner needs to report his share of the company’s income or loss on their individual tax forms. This allows LLPs to avoid paying federal income taxes at the company levels. Partners report their portions of earnings and losses on their individual tax forms.

**Observation:**

All the three types of LLPs are recognized as legal entities but only the incorporated LLP has the status of a body corporate whilst the other two has either the status of a legal entity which is not a body corporate or a LLP with partnership status. Only the incorporated LLP is subjected to the company laws whilst the other two LLPs are not subjected to the company law.

There are also differences pertaining to reporting requirements. For example, in the Singapore LLP, which is an incorporated LLP, there is a statutory duty to lodge the annual declaration of solvency/insolvency to the registrar whilst for the Jersey LLP, and US LLPs, no reporting requirement is imposed. Nonetheless, in all types of LLPs, there is no duty to submit audited accounts to the registrar though they are required to keep accounting and other records which are sufficient to indicate transactions and financial position of the LLP and which give a true and fair view of the state of affairs of the LLP.

As regards to limitation of liabilities, all types of LLPs provide limited liability to its partners. However, in all LLPs, defaulted partners are jointly liable with the LLP for claims from losses resulting from his wrongful act or omission.

**Differences between LLP and a limited liability company:**

The main difference between the LLP and a limited liability company lies in the internal governance structure; whereby a company is strictly regulated by the Companies Act whereas the LLP is govern by a contractual agreement between partners/members. The LLP also have lesser compliance requirements as compared to a company, whereby for registration, it is not required to submit legal documents similar to Memorandum and Articles of Association. LLP is also not required to submit its audited account to the registrar. The tax regime of LLP is also totally different from a company as LLP is taxed similar to a partnership.
Other than the tax status, internal regulation, registration and disclosure requirements, LLP is very much similar to a company. Both entities have separate legal entity distinct from its members and enjoy attributes as a legal person, such as ability to own property, enter into legal proceedings and perpetual succession.

**Differences between LLP and a partnership:**

The main difference between the LLP and a partnership is that in both types of LLP, the members or partners are not personally liable for the business’s debts and liabilities. Creditors of the LLP cannot go after the members’ or partners’ personal assets to pay off the LLP’s debts. Where as in a partnership structure, all partners have unlimited liability for the business debts to the extent that their personal assets could be claimed by the creditors if the business assets are not sufficient to pay the creditors.

It also important to highlight that in a partnership, all partners are liable, jointly with all the other partners and also severally for all acts of the firm done while he is a partner but in a LLP, liabilities of the partners or members are limited to his agreed contribution. In addition, due to its legal entity, partners or members of LLP are only agent to the LLP and not to one another. As such they are not liable on account of the independent or un-authorized acts of other partners, thus allowing individual partners to be shielded from joint liability created by another partner’s wrongful acts or misconduct.

Despite having different liability regime, LLP and partnerships are almost identical when it comes to internal regulation and taxation. In both types of business entities, the internal affairs are regulated via an agreement between the partners or members. There is no formal constitution such as the Memorandum and Articles of Association which determined how the internal relationships should be governed. Members and partners in LLP enjoy the internal flexibility similar to partners in a partnership. In relation to taxation, both partners and members of LLP and partnerships report business income or losses on their personal tax returns; the business itself does not pay tax on the income.

**The development of business vehicles in Malaysia:**

In Malaysia the initiative to expand the option of business entities was made by the Companies Commission of Malaysia (CCM) under its Corporate Law Reform Programme. To ensure that the reform programme will be conducted effectively and objectively, CCM has established a committee called the Corporate Law Reform Committee (CLRC) pursuant to sections 17 and 19 of the Companies Commission of Malaysia Act 2001. One of the terms of reference of the CLRC is to consider whether the existing legal forms of business vehicles i.e. the partnership and the corporate forms are able to provide. This objective was executed by the CLRC by establishing Working Group A. One of the outcomes of the CLRC’s efforts is the 2003 consultative document (CD) for an alternative business vehicle for small businesses and venture capital arrangements. The second consultative document was issued in April 2008. The main objective of both consultative documents are to gather responses from the public, business community, financial institutions, academician and practitioners, as regards the proposed structure of Malaysia’s own limited liability partnerships. Pursuant to the feedback received from public consultations on the in 2003 and 2008, CCM published the discussion draft bill of LLP in March 2009. The draft bill now waits for reading by the House of Senate which is scheduled in the 2011 Parliamentary session.

**LLPs in Malaysia:**

In Malaysia, at present LLPs are only available in Labuan,i.e, its offshore. The Labuan LLPs law is unique as they are incorporated under the same Act with limited partnership, i.e. the Labuan Limited Partnership and Limited Liability Partnerships Act (LP and LLPA) 2010. Under the LP and LLPA 2010, any two or more persons may form a Labuan limited partnership for any lawful purpose. This means Labuan LLP is also open for the professionals businesses.

**The Malaysian proposed LLP:**

Different from the UK LLP, which was introduced to resolve the problem of increasing insurance claims for professional negligence of accounting firms (Diana Faber, 1997), the Malaysian LLPs is proposed to stimulate growth of the SMEs and to enhance the domestic business activities. It is also aim to prepare the local market for the international business environment.

Referring to the LLP bill 2011, the Malaysian proposed LLP is akin to the incorporated LLP, whereby the LLP shall have a status of body corporate but tax as partnerships. The draft Bill highlighted important features of the proposed LLP:
(a) limited liability for all members of the LLP but without the strict management procedures of an incorporated body;
(b) perpetual succession of the LLP whereby changes in membership will not affect the legal entity of the LLP; and
(c) flexibility in determining the internal arrangements between the members.

As the LLP is proposed to have the status of a body corporate, it shall have all the attributes of a company, namely separate legal personality, limited liability, perpetual succession, to sue and be sued and to acquire its own property. As regards to limited liability, the Bill proposed for all partners of the LLP to be entitled for unlimited liability in respect of tort and contractual claims against the LLP. The conferment of limited liability status will shelter the individual partners from the debts and liabilities of the LLP as well as personal liability from the acts of another partner, which were carried out during the course of business. However, such power will not insulate a partner of the LLP, which he would otherwise incur by his own wrongful act or omission, even though such acts were carried out in his role as a partner of the LLP. It is also proposed that limited liability shall be given to innocent partners only whilst the defaulting partner shall be jointly liable with the LLP for the damage, loss or injury suffered by a third party.

Other than the attributes, it is important to highlight that similar to other LLPs, registration is required for the proposed LLP. However, the partners’ agreement is not required to be lodged with the Registrar. As for the number of members, the proposed minimum number is two but there shall be no maximum number. It is also stated that in the case that the number of partner falls below two, a certain grace period shall be allowed for the LLP to operate. Failure to fulfill the minimum requirement after the grace period means that the LLP shall be wound up. Memberships of the proposed LLP are open to both natural and artificial person.

The LLP Bill also proposed for the need to have a designated compliance officer who must be a natural person residing in Malaysia. The job’s scope of the designated compliance officer is akin to a company secretary. Different from the UK and Jersey LLP, the CCM proposed that the designated officer should not necessarily be a partner of the LLP but shall be subjected to disqualification requirements/criteria under sections 125, 130 and 130A of the Companies Act 1965.

As regards to internal arrangement, CCM proposed to adopt the UK’s approach whereby the members should have all the rights to draft the LLP internal regulation. However, default rules shall be included in the proposed LLP Act, so that in the absence of the partners’ agreement, the default rules shall be applicable.

Pertaining to relation with the third parties, partners of the proposed LLP shall only be agents to the LLP and not to one another. The LLP shall be responsible for any act of the partners, which are committed within the partners’ authority. However, the liability regime is only available to innocent partners whilst defaulted partners shall be jointly liable with the LLP to the third parties’ claims.

Ethical and business issues of incorporation of professionals businesses:

It is observed that the main issue related to ethic if professionals are allowed to incorporate is the limitation of liability. As incorporation provides limited liability to the members, it is contended that if professionals are protected with limited liability, they would not observe their code of ethic and the standard of duty of care expected of a professional would be compromised.

Donald H. Rivkin (1998), Chairman of the American Bar Association’s Trans-national Law Practice Committee, observed that ethical codes and practices of the legal professions throughout the world cover largely the same ground and contains largely the same prescriptions for lawyers’ conduct. In attempting to define what legal professionalism is, the American Bar Association’s 1996 Commission on Professionalism noted that the profession is not a business. It is distinguished by the requirements of extensive formal training and learning, admission to practice by qualifying licensure, a code of ethics imposing standards qualitatively and extensively beyond those that prevail or are tolerated in the marketplace, a system for discipline of its members for violation of the code of ethics, a duty to subordinate financial reward to social responsibility, and, notably, an obligation on its members, even in non-professional matters, to conduct themselves as members of a learned, disciplined, and honorable occupation

DP Rajah (2006), highlighted that a corporate structure cannot be used by practitioners to totally avoid from liabilities as the company only becomes liable for acts where the practitioner is not personally liable. The client’s interest remains protected as the corporation is covered by heavy and expensive insurance. However, the heavy insurance premium payment for professional corporate structure/model is not popular among lawyers (Steven Mark, 2003).

From the business perspectives, incorporation of professional firms could bring along with it the benefits associated with a corporation for example, it would be easier for the business to raise capital for the business infrastructure (DP Rajah, 2006). Furthermore, the professionals could also set up a better management structure that is based on the corporate model.
There would also be a continuity of existence as the property of the corporation is vested in the corporation itself and not in the partners. Finally, the corporation can undertake greater risk ventures as such risk is limited to the paid-up capital of the corporation and does not affect the personal assets of the practitioners and the shareholders (DP Rajah, 2006).

In Singapore, the shareholders and the directors of the Law Corporation (LLC) model are all lawyers. As such the ethical values of the profession are retained and protected. Conflict of interest issues involving clients are avoided and the right of lawyers to act independently remains protected. This model is however not as flexible as the UK LLP model. The UK LLP allows lawyers to vary the contractual relationship among them. Lawyers in the LLP’s can thus take greater risk to venture into the different jurisdictions to provide legal services with minimum personal risk to themselves. The structure of the Singapore LLC model, on the other hand, is rigid. This model does not provide the flexibility needed for lawyers to venture into different jurisdictions. Legal Corporation model as practiced in New South Wales (NSW), Australia, is similarly not flexible.

According to Cyrus Das (2001), the UK Limited Liability Partnership Model (LLP) has no shareholders and no directors but only members who are not partners either. The members of the corporation shall be professionals such as all lawyers and they regulate their activities by way of contract among themselves although they cannot limit the liability of the corporation below the compulsory level of insurance that has to be taken to protect clients’ interests.

This LLP model is seen as a flexible model in that while the rights of clients are protected, the model provides flexibility needed for the members to regulate their activities according to the needs of the situation. Members can also modify their rights and relationship with each other within the LLP by way of contract. The LLP model can then adapt itself to the varying business situations and lawyers can venture into different markets with varying conditions. The risk is taken by the corporation itself while the practitioner’s liability only remains in tort and in contract. Thus, to conclude that professionals are relieved from their standard and required duty of care via LLP is not right. LLP only provides partial limited liability to professionals and the public interest are still protected as the professionals are still accountable and personally liable for their tort and criminal defaults.

Another important aspect in LLPs is tax management. LLPs allow professionals to retain benefits of being tax as partnerships and not as a company despite its body corporate status. This is important particularly to small and medium businesses which benefit most under the income tax scheme rather than on the corporate tax scheme.

Conclusion:

It is observed that one of the means to minimize the business risk is by choosing the correct business vehicle, particularly those which provides limited liability. At present, the option of business vehicles, which are available in Malaysia, are merely confined to the traditional business vehicles, namely, sole proprietorships, partnerships and companies and for certain professions such as lawyers and accountants, corporate structure is excluded as an option. It is perceived that with the introduction of LLP, the Malaysian market will be more attractive to investors and provide more option of conducting business, particularly to the professionals.

It is also vital to highlight that the introduction of the proposed LLP in Malaysia shall not affect or compromised the credibility and ethical quality of the professionals as the personal liability of the professionals are still intact on all partners. The limitation of liability in LLP is only viable for innocent partner and not to defaulted partners. The scope of limited liability is also partial and not wholly. As such, partners still have to be cautious on their duties to client as they shall be jointly liable with the LLP for their default in tort and in contracts.

The flexibility of LLP structure also allows professionals to improve management structure and to expand business for example, as regards to ability to raise capital and to create floating charge which an advantage is given only to a body corporate structure. In fact, the ‘internal management’ structure of LLP is seen to be better than a company as it is not rigid and largely depends on the partners rather than on the statute.

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