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KARNATAKA STATE
CHARTERED ACCOUNTANTS ASSOCIATION (R)

Recraft yourself

To,
Smt Nirmala Sitharaman,
Minister of Finance and Corporate Affairs,
Government of India,
B Wing, 2nd Floor, Paryavaran Bhawan,
CGO Complex, Lodhi Road,
New Delhi – 110 003.

Date: 5th September 2023

Respected Madam,

Subject: Clarification on Admission of Indian Trusts as Partners in Limited Liability Partnership Firms ("LLP")

The Karnataka State Chartered Accountants Association (R) (in short 'KSCAA') is an association of Chartered Accountants, registered under the Karnataka Societies Registration Act, in the year 1957. KSCAA is primarily formed for the welfare of Chartered Accountants and represents before various regulatory authorities to resolve the professional problems faced by Chartered Accountants and the business community.

In the past, we have written to your good selves many times populating various issues, challenges and hardships being faced by taxpayers and Chartered Accountants and suggesting possible solutions on the same. Herein, we are presenting before your good selves, to seek a clarification on Admission of Indian Trusts in Limited Liability Partnership Firms ("LLP").

<u>Rationale for Clarification Request</u>

We are writing to seek clarification regarding the eligibility of Indian trusts, established under the Indian Trusts Act, 1882 ("Trusts Act"), to be admitted as partners in a Limited Liability Partnership ("LLP") incorporated under the provisions of the Limited Liability Partnership Act, 2008 ("LLP Act"). It is important to note that while a company incorporated under the Companies Act can have a trust as its shareholder, the LLP Act lacks clarity on whether a trust can be admitted as a partner in an LLP. This uncertainty has been a subject of discussion within our association, and we believe that obtaining clarification from the Ministry of Corporate Affairs ("MCA") would be highly beneficial to all stakeholders involved.

Trust Structure and Ownership

In the case of a trust, it is the trustee(s) who hold and manage the trust's affairs in accordance with the provisions outlined in the trust deed. The trustees are the legal owners of the trust's assets, albeit holding them in a fiduciary capacity solely for the benefit of the trust's beneficiaries, who are the ultimate beneficial owners of these assets.

Clarification Request Summary

The clarification we seek pertains to whether a trust, which is not registered under SEBI regulations, can be admitted as a partner in an LLP through its trustee, who may be an individual or a body corporate. To provide context, we summarize the current provisions of the LLP Act as follows:

As per Section 2(1)(q) in conjunction with Section 5 of the LLP Act, a valid partner in an LLP must be either an 'individual' or a 'body corporate.'

The Ministry of Corporate Affairs, Government of India, has previously issued Circular No. 37/2014 dated October 14, 2014, clarifying that a trustee representing a trust registered with the Securities and Exchange Board of India (SEBI), whether as a Real Estate Investment Trust or an Infrastructure Investment Trust, or in any other capacity, may be admitted as a partner in an LLP in the trustees' name without the addition of the statement that it is a trustee, provided that the trustee is a body corporate.

Representation Summary:

Given the aforementioned context, we the members of Karnataka State Chartered Accountants Association, on behalf of the entire Chartered Accountants community and also on behalf of the trade and industry in the state of Karnataka appeal to your good selves to kindly consider our above request. We respectfully request that a similar clarification be issued for the admission of trusts not registered under SEBI regulations. This would enable trusts to become partners in an LLP through their trustees, whether such trustees are individuals or body corporates.

We appreciate your attention to this matter and look forward to your response.

Yours sincerely,

For Karnataka State Chartered Accountants Association ®

CA. Sujatha G President	CA. Sunil Bhandary Secretary	CA. Babitha G Chairperson, Representation Committee

CA. Naveen S Hegde
Chairperson, Corporate and Allied Laws Committee