

LIMITED LIABILITY PARTNERSHIP (LLP) – AN ALTERNATE VEHICLE FOR SETTING UP BUSINESS IN INDIA



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1.0 INTRODUCTION - LIMITED LIABILITY PARTNERSHIP (LLP) AS A FORM OF SETTING UP BUSINESS IN INDIA

LLP form of business organization combines the advantageous features of both company and partnership into a new business model. LLP is viewed as an alternative business vehicle in which the liability of its partners is limited to the extent of their capital contribution or as agreed as per the Limited Liability Partnership Agreement. The primary intention of LLP is that its external structure should mirror that of the limited company but in terms of conduct of internal affairs it would be similar to traditional partnership.

A LLP is a body corporate, with a distinct legal entity separate from that of its partners. It has perpetual succession and a common seal. It is liable to the third parties independent of the other partners. Any change in its partners, will not affect the existence, rights or liabilities of the LLP. LLP can make contracts, hold assets, sue or be sued in its own name and can hold property or become insolvent.

Unlike corporate shareholders, the partners of a LLP have the right to manage the business directly. One partner is not responsible or liable for another partner's misconduct or negligence. Liability of the partners is limited to their agreed contribution in the LLP or as specified in the LLP Agreement. However, the partner's liability in case of fraud is unlimited. The mutual rights and duties of the partners of LLP and the mutual rights and duties of LLP and its partners shall be governed by LLP agreement between the partners or between LLP and its partners. In the absence of such agreement relationship of Partners and LLP would be governed as per Schedule 1 of LLP Act, 2008.

2.0 FEATURES OF THE LLP BUSINESS MODEL

- It is a Legal entity separate from its partners.
- LLP can be formed only for carrying on 'for profit' business.
- No minimum capital limit prescribed for formation of LLP
- Existing Companies & Partnership can convert themselves into LLP
- Minimum of 2 partners required and no maximum limit
- Atleast two individuals as Designated Partners in LLP, of whom at least one shall be resident in India.
- LLP is governed by LLP Agreement
- LLP has to prepare and file Statement of Account and Solvency
- LLP shall maintain books of accounts.
- Audit of the accounts is required only if the contribution exceeds Rs. 25 lakhs or annual turnover exceeds Rs.40 lakhs. However, LLP carrying on business and having gross turnover, receipts or sales exceeding Rs.100 lakhs or more and LLP carrying on profession and having gross receipts of Rs.50 lakhs or more is required to get accounts audited u/s 44AB of Income-tax Act,1961

- Only Chartered Accountant in practice can be appointed as Statutory Auditor
- Tax issues of LLP are addressed under the Income Tax Act 1961 separately
- Income-tax - 30% of total income with education cess of 3%. Effective tax rate is 30.90%. No Surcharge would be levied on LLPs taxable amount.
- Indian Partnership Act, 1932 shall not apply to LLP.
- Applicability of Companies Act, 1956 will be directed by Central Government by notification in Official Gazette.
- Concept of Whistle Blower has been introduced in LLP.
- As per FDI Policy, FDI in LLP is allowed through automatic and government route.
- Further FDI in LLP through automatic route is allowed to only those sectors where 100% FDI is allowed under automatic route under the FDI policy subject to certain specified conditions.
- LLP is not allowed to raise External Commercial Borrowing.

3.0 ADVANTAGES OF SETTING UP BUSINESS IN LLP FORM

- Flexibility in its structure and operation
- Low statutory cost of incorporation
- No minimum capital contribution requirement
- LLP Agreement is flexible and LLP can define own rules and regulations
- No restrictions as to maximum number of partners.
- Limited liability benefit to its partners.
- Personal liability only in case of frauds otherwise partner is not personally liable for acts or omissions of other partner
- No mandatory requirements as to board meetings, resolutions, annual meetings, etc.
- Audit of Accounts is required only in case of contribution exceeding Rs. 25 lakh or turnover exceeding Rs. 40 lakh.
- Less paperwork
- Less compliances as compared to a company.
- The salaries and other compensation, distribution of profits paid to partners are not questionable by any authority as in case of companies

4.0 DISADVANTAGES OF SETTING UP BUSINESS IN LLP FORM

There are no serious disadvantages of setting up business in this form except that there are certain limitations for a foreign LLP. To incorporate a LLP it requires minimum two partners so if a NRI/ Foreign national wants to form an LLP in India then at least one partner should be a resident of India. Two foreign partners cannot form LLP without having one resident Indian partner along with them. Also there are some conditions with respect to Foreign Direct Investment in LLPs.

Additionally, the LLP Act has provided high penalties for default/ non-compliance on procedural matters such as delay in filing of e-forms.

5.0 FOREIGN DIRECT INVESTMENT (FDI) IN LLP

As per the consolidated FDI Policy (Effective from 12th May, 2015) and Press Note No. 12(2015 series) issued by the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, FDI in LLPs is permitted, subject to the following conditions:

- (a) FDI will be allowed, through the automatic route, only in LLPs operating in sectors/activities where 100% FDI is allowed, through the automatic route and there are no FDI-linked performance conditions (such as 'Non Banking Finance Companies' or 'Development of Townships, Housing, Built-up infrastructure and Construction-development projects' etc.).
- (b) LLPs with FDI will not be allowed to operate in agricultural/plantation activity, print media or real estate business.
- (c) An Indian company or LLP, having FDI, will be permitted to make downstream investment in another company or LLP in sectors in which 100% FDI is allowed, through the automatic route and there are no FDI-linked performance conditions.
- (d) FDI in LLP is subject to the compliance of the conditions of LLP Act, 2008.
- (e) Foreign Capital participation in LLPs will be allowed only by way of cash consideration, received by inward remittance, through normal banking channels or by debit to NRE/FCNR account of the person concerned, maintained with an authorized dealer/authorized bank.
- (f) Investment in LLPs by Foreign Institutional Investors (FIIs) and Foreign Venture Capital Investors (FVCIs) will not be permitted. LLPs will also not be permitted to avail External Commercial Borrowings (ECBs).
- (g) In case the LLP with FDI has a body corporate that is a designated partner or nominates an individual to act as a designated partner in accordance with the provisions of Section 7 of the LLP Act, 2008, such a body corporate should only be a company registered in India under the Companies Act, 1956 and not any other body, such as an LLP or a trust.
- (h) For such LLPs, the designated partner "resident in India", as defined under the 'Explanation' to Section 7(1) of the LLP Act, 2008, would also have to satisfy the definition of "person resident in India", as prescribed under Section 2(v)(i) of the Foreign Exchange Management Act, 1999.
- (i) The designated partners will be responsible for compliance with all the above conditions and also liable for all penalties imposed on the LLP for their contravention, if any.

- (j) Conversion of a company with FDI, into an LLP, will be allowed only if the above stipulations (except part (e) above) which would be optional in case of a company) are met and with the prior approval of FIPB/Government.

There is difficulty in attracting foreign funds in LLP as the Government allows foreign capital participation in LLPs only by way of cash consideration, received through inward remittance using normal banking channels. To increase the flow of foreign funds into LLPs, the government is set to allow wholly owned subsidiaries of foreign entities to directly invest in these firms from the earnings generated in the country. This move is being considered to attract entrepreneurs to the LLP business model as they will find it easier to tap foreign funds to expand equity.

6.0 REGULATORY ENVIRONMENT FOR LLP

The Limited Liability Partnership Act 2008 (LLP Act 2008) enacted by the Parliament and notified on 31.03.2009 is the principal Act to make provisions for the formation and regulation of limited liability partnerships and for matters connected therewith or incidental thereto. Additionally for the purpose of the Act, the Central Government through notification dated 1st April 2009 made the Limited Liability Partnership Rules, 2009 (LLP Rules 2009). The LLP (winding Up and Dissolution) Rules 2012 were notified on 10th July 2012.

The LLP Rules 2009 lays down the forms to be filed under the LLP Act 2008 and also lays down the details of fees to be paid in various circumstances in Annexure A to the Rules.

The Ministry of Corporate Affairs (MCA) and the Registrar of Companies (ROC) are the administrative bodies to regulate the LLP Act 2008. (Websites: <http://www.mca.gov.in/> and <http://www.mca.gov.in/LLP/>)

Since LLP is a hybrid of Company and Partnership form of business Organization, the applicability of the Acts governing these two forms of business comes into question, the position as to which is as follows - The LLP Act 2008 empowers the Central Government under section 67 of the Act to apply the provisions of the Companies Act 1956 or any other Act with appropriate exception, modifications and adaptation to LLP. However, the Indian Partnership Act 1932 is specifically excluded from application to LLP and should not be looked upon as applying in any form of default basis.

7.0 PROCEDURE, TIMELINE AND COST FOR INCORPORATING LLP

LLP registration is administered by the Ministry of Corporate Affairs (MCA), Government of India, through the office of the Registrar of LLP. The incorporation/registration process is fully electronic, similar to the Company registration process, i.e. applications and documents are filed online and the ROC issues a digitally signed Certificate of Incorporation (COI).

Every LLP shall use the forms annexed to the LLP Rules 2009 for the purpose of the LLP Act 2008, and shall specify therein its limited liability partnership identification number (LLPIN). The electronic form shall be authenticated by authorized signatories using digital signatures.

The process for incorporating a LLP is as follows:

- Decide on the Partners and the Designated Partners
- Obtain Designated Partner Identification Number (DPIN) and a Digital Signature Certificate (DSC)
- Decide on the name of the LLP and check whether it is available.
- Draft the LLP agreement
- File the LLP Agreement, incorporation documents and obtain the Certificate of Incorporation.
- The Registrar of LLP is the authority having jurisdiction over the incorporation

Some Important points with respect to Incorporation:

1. Partners and Designated Partners:

At least two partners are required to form a LLP. There is no maximum limit for the number of partners. The following persons are eligible as partners in a LLP –a. Any individual or body corporate may be a partner in a LLP; b. On Incorporation of LLP, the persons who have subscribed their names to the Incorporation Document shall be its Partners; and c. Any other person may become a Partner in accordance with the LLP Agreement.

A LLP should have a minimum of two 'Designated' partners who are individuals and at least one of them should be resident in India. Provided that in case of a limited liability partnership in which all the partners are bodies corporate or in which one or more partners are individuals and bodies corporate, at least two individuals who are partners of such limited liability partnership or nominees of such bodies corporate shall act as designated partners

Every Designated Partner is required to obtain a DPIN from the Central Government. DPIN is an eight digit numeric number allotted by the Central Government and has to be obtained by making an application in e-Form 7 to Central Government along with necessary identity and Address proof along with prescribed fees. Once DPIN is allotted it will be used in all the LLP's in which person is appointed as Designated Partner and he has not required to obtain it on every appointment in various other LLPs.

L2. DIN/DPIN

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All designated partners of the proposed LLP shall obtain “Designated Partner Identification Number (DPIN)”. You need to file eForm DIN-1 in order to obtain DIN or DPIN. In case you already have a DIN (Director Identification Number), the same can be used as a DPIN.

DIN / DPIN is a unique Identification Number allotted to an individual who is an existing director of a company or intends to be appointed as director of a company pursuant to section 266A & 266B of the Companies Act, 1956 (as amended vide Act No 23 of 2006) / or a Designated Partner of a LLP under section 7 of the Limited Liability Partnership Act, 2008.

Income-tax Permanent Account Name (Income-tax PAN) is mandatory as identity proof in case of Indian nationals and in such case applicant details should be as per Income-tax PAN. In case of foreign nationals, Passport number is mandatory. In case of Foreign Partner / NRI, the Passport copy is mandatory requirement as a proof of identity. The address proof should not be older than 1 year from the date of filing of the eForm. The Passport copy and address proof should be notarized by the Consulate of the Indian Embassy, Foreign public notary or Company secretary in full time employment / CEO / Managing director of the Indian company in which he / she proposed to be a director.

3. Digital Signature Certificate

The Information Technology Act, 2000 provides for use of Digital Signatures on the documents submitted in electronic form in order to ensure the security and authenticity of the documents filed electronically. All filings done by LLP under e-filing are required to be filed with the use of Digital Signatures by the person authorised to sign the documents.

The Ministry of Company Affairs (MCA) has stipulated a Class-II or above category certificate for e-filings under MCA21. A person who already has the specified DSC for any other application can use the same for filings under MCA21 and is not required to obtain a fresh DSC. The DSCs are typically issued with 1 year validity and 2 year validity. These are renewable on expiry of the period of initial issue.

4. Name Availability

Every limited liability partnership shall have either the words “limited liability partnership” or the acronym “LLP” as the last words of its name. LLPs would not be given names, which, in the opinion of the Central Government, are undesirable. Registrar would be under obligation to follow such rules, which would be framed by the Central Government in connection with allotting names to LLPs. The LLP needs to file e-Form 1 i.e Application for reservation or change of name. To check name availability free name search facility (of existing companies / LLPs) is available on MCA portal. The applicant needs to give upto 6 proposed names in preference along with their meaning and significance of each word. Also the applicant has to adhere to the Name Availability Guidelines 2011 issued by MCA.

There are also provisions in respect of ‘rectification of name’ in case two LLPs have been registered with the same name, inadvertently. The name can be reserved by ROC on approval of Form 1, for a period of 3 months from the date of intimation by the Registrar. However, Foreign LLP/Companies have an option to reserve their

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existing names, under which they are operating outside India, for a period of 3 years in India, which can be further renewed on application to Registrar in Form 25.

8.0 LLP AGREEMENT

LLP Agreement means any written Agreement between the partners of the LLP, or between the LLP and its Partners, which determines the mutual rights and duties of the partners and their rights and duties in relation to the LLP.

It is not mandatory by law to enter into a formal LLP agreement and where no LLP agreement has been executed between the partners of LLP or the agreement is silent on certain issues, the provisions of the First Schedule to the LLP Act 2008 shall apply.

It is not necessary to have the LLP Agreement signed at the time of incorporation, as the details of the same needs to filed in eform 3 within 30 days of incorporation but in order to avoid any dispute between the partners as to the terms & conditions of the agreement after the formation of LLP, it is always beneficial to have the LLP Agreement drafted and executed before the incorporation of the LLP. In case the Agreement is executed outside India, then it must be notarized and consularized.

The Stamp Duty payable on LLP Agreement is a State subject and same may be paid as per the State Stamp Act. Till the time specific Stamp Duty is prescribed in respective Stamp Act, the Stamp duty on LLP Agreement may be paid as per the stamp duty payable on partnership agreement in view of the Finance Bill, 2009.

9.0 ANNUAL FILING AND OTHER APPROVAL/ COMPLIANCE RELATED FILING TO BE MADE BY LLP

A LLP is required to file with the Registrar every year a Statement of Account & Solvency in e-Form 8 and Annual Return in e-Form 11. Every LLP Registered on or before 30th September 2012 has to file returns for the year ending 31.03.2013. Filing of returns are mandatory whether the LLP has done any business or not. Annual Compliance Filing for LLP's registered on or after 1st October 2013 will fall only in the year 2014.

Other Filings to be made by LLP depending upon case-to-case basis are:

- Application for reservation or change of name in e-Form 1
- Incorporation Document and Subscriber's Statement in e-Form 2
- Details in respect of Designated Partners and Partners of LLP in e-Form 2A
- Information with regard to LLP Agreement and changes, if any made therein in e-Form 3
- Notice of appointment, cessation, change in name/ address/designation of a designated partner or partner and consent to become a partner/designated partner in e-Form 4
- Notice of appointment, cessation, change in particulars of a partners in e-Form 4A
- Notice of change of name in e-Form 5
- Form for Intimating other address for service of Documents to be filed for giving additional address to the Registrar for the purpose of service of documents in e-Form 12.

- Notice for change of place of registered office in e-Form 15.
- Application and statement for conversion of a firm into Limited Liability Partnership (LLP) in e-Form 17.
- Application and Statement for conversion of a private company/ unlisted public company into limited liability partnership (LLP) in e-Form 18.
- Notice of intimation of Order of Court/ Tribunal/CLB/ Central Government to the Registrar required to be filed to inform Registrar about the order received by the LLP/ FLLP in e-Form 22.
- Application for direction to Limited Liability Partnership (LLP) to change its name to the Registrar in e-Form 23.
- Application to the Registrar for striking off name in e-Form 24.
- To reserve/renew the name of foreign LLP or foreign company for a period of three years in e-Form 25
- Registration of particulars by Foreign LLP in e-Form 27.
- Return of alteration in the incorporation document or other instrument constituting or defining the constitution; or the registered or principal office; or the partner or designated partner of limited liability partnership incorporated or registered outside India in e-Form 28.
- Notice of the following in e-Form 29
 - (A) alteration in the certificate of incorporation or registration;
 - (B) alteration in names and addresses of any of the persons authorised to accept service on behalf of a foreign limited liability partnership (FLLP)
 - (C) alteration in the principal place of business in India of FLLP
 - (D) cessation to have a place of business in India
- For compounding of an offence under the Act in e-Form 31.
- Form for filing addendum for rectification of defects or incompleteness in e-Form 32.
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10.0 LLP FEES

The fees payable in pursuance of the various provisions of the LLP Act 2008 and the LLP Rules 2009 shall be as mentioned in Annexure 'A' to the LLP Rules 2009, and shall be paid into the Public Account of India. However, where the amount involved does not exceed 50/-, the fees payable to the Registrar may be paid also through postal orders or through bank drafts payable at and/or drawn on post offices or banks, as the case may be, located at the same city or town where the office of the Registrar is situated. Such fee shall not be deemed to have been paid unless and until the relevant postal orders or drafts are cashed and the amount credited.

Where application is filed through electronic media or through any other computer readable media, the user may choose any one of the following payment options namely,

- (i) Credit Card; or
- (ii) Internet Banking; or
- (iii) Remittance at the Bank Counter; or
- (iv) any other mode as approved by the Central Government.

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Registration fee (including fee for conversion of other existing forms of business into LLP) and Filing Fee to be paid by LLP are as follows:

Amount of Contribution	Registration	Filing
Up to 1 lakh	500	50
Above 1 up to 5 lakh	2000	100
Above 5 up to 10 lakh	4000	150
Exceeds 10 lakh	5000	200

Fee for filing any form or a Statement of Account and Solvency or a notice or a document by Foreign LLP is Rs.5000/- for filing a document under rule 34(1) and Rs.1000/- for any other form or Statement of Account and Solvency or notice or document.

Fee for any application other than above shall be as under:-

DOCUMENTS	FEES
An application for reservation of name u/s 16	200
An application for direction to change the name u/s 18	10000
An application for reservation of name u/Rule 18 (3)	10000
Application for renewal of name u/Rule 18(3)	5000
Application for obtaining DPIN u/Rule 10(5)	100
For inspection of documents	50
Certified Copy or extract of any document	5 per page or fractional part thereof