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Theme 214

**LIMITED LIABILITY PARTNERSHIP (LLP)**

A monthly publication from South Indian Bank



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Theme No. 214 : LIMITED LIABILITY PARTNERSHIP (LLP)

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Limited Liability Partnerships (LLP) have become another addition to the existing association of persons such as partnerships and companies to conduct business for commercial purposes. The concept of LLP has become attractive as it combines the advantages of a partnership and a company and offers flexibility in doing business. LLP is called a 'hybrid' between a company and a partnership.

The LLP structure is already prevalent in countries such as the UK, the USA, Australia, Singapore and in various Gulf countries. The LLP Act in India is broadly based on UK LLP Act 2000 and Singapore LLP Act 2005. Both these Acts allow creation of LLPs in a body corporate form i.e. as a separate legal entity, separate from its partners/members.

India passed the Limited Liability Partnership Act in 2008, providing the legal framework for the formation of LLPs. The Act came into force on April 1, 2009. The first limited liability partnership in India was registered on April 2, 2009. There are 244 LLPs registered as of September 30, 2009.

**Concept of “limited liability partnership”**

LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership. The LLP can continue its existence irrespective of changes in partners. It is capable of entering into contracts and holding property in its own name. The LLP, as a separate legal entity, is liable to the full extent of its assets but liability of the partners is limited to their agreed contribution in the LLP. Further, no partner is liable on account of the independent or un-authorized actions of other partners, thus individual partners are shielded from joint liability created by another partner's wrongful business decisions or misconduct. Mutual rights and duties of the partners within a LLP are governed by an agreement between the partners.

**LLP Structure**

Thus, LLP shall be a body corporate and a legal entity separate from its

partners. It will have perpetual succession. Any two or more persons associating for carrying on a lawful business with a view to profit may set up an LLP. Thus, an entity with charitable or other non-profit objectives will not be able to set up LLPs.

LLP must have two 'designated partners' who must be individuals. The designated partners are liable for all compliances as required in the LLP Act. If a body corporate is a partner of LLP, it can nominate a person as 'designated partner'. The designated partners have to obtain Designated Partner Identification Number (DPIN). The name of an LLP should end with the suffix 'LLP' indicating limited liability partnership. An LLP is advantageous owing to comparatively lower cost of formation and lesser compliance requirements. It is easy to manage and run and also easy to wind up and dissolve. There are no requirements of minimum capital contributions. But LLP cannot raise money from the public.

LLP operates as a form of business model which is organized and operates on the basis of an agreement. It provides flexibility without imposing detailed legal and procedural requirements.

### **Process of Incorporation of LLP**

The registrar of companies (ROC) is the authority having jurisdiction over the incorporation of LLP. Once formation of LLP is finalized by the partners, the 'designated partners' should obtain Designated Partner Identification Number' (DPIN) and a digital signature certificate. The name of the LLP is to be decided and its availability to be checked. LLP agreement is to be drafted and LLP agreement and incorporation documents are to be filed with ROC to obtain the Certificate of Incorporation.

### **A New Legislation for LLP**

The Companies Act is not suited to the governance structure intended for LLPs. The overall intent of the companies Act is to regulate widely-held companies. The administration and enforcement of partnership firms under the Indian Partnership Act are controlled at the state level. Many firms in biotech, information technology, intellectual property and other knowledge based sectors find traditional partnerships unsuitable. LLP structure will be most suitable for multi-disciplinary combinations comprising a large number of partners, seeking flexible working environment but with limited liability. LLP structure will promote growth of such enterprises across

states in India and also abroad.

### **LLP and partnership firm – A Comparison**

Under partnership, every partner is liable, jointly with all other partners and also severally for all acts of the firm done while he is a partner. Under LLP structure, liability of the partner is limited to his agreed contribution. Further, no partner is liable on account of the independent or un-authorized acts of other partners. This protects individual partners from joint liability created by another partner's wrongful acts or misconduct.

A traditional partnership should have minimum of 2 partners and maximum of 20 partners. For LLP, the minimum number is 2 and no maximum number is specified in the LLP Act.

Registration of partnership firm is not compulsory. For LLP, compulsory registration with the registrar of companies is required. Foreign nationals cannot become partners of a firm in India. LLP allows foreign nationals to become partners of LLP. A partnership is not required to file annual returns or accounts with the registrar of firms. An LLP is required to file annual statement of accounts, solvency and annual return with registrar of companies.

Written agreement is not essential for partnership. For LLP, an 'Incorporation document is required to be executed. An LLP agreement is required, but not mandatory.

In partnership, documents are required to be filed with registrar of firms in respective states. For LLP, registrar of companies is the administering authority. As a separate legal entity, an LLP can own assets in its own name. A partner of LLP can enter into business with LLP and can give loans to the same LLP. Death or resignation of a partner does not dissolve LLP.

### **LLP and Company – A Comparison**

A basic difference between an LLP and a joint stock company lies in that the internal governance structure of a company is regulated by statute (i.e. Companies Act, 1956) whereas for an LLP it would be by a contractual agreement between partners. The management-ownership divide inherent in a company is not there in a limited liability partnership. LLP will have more flexibility as compared to a company. LLP will have lesser compliance requirements as compared to a company.

There are a number of similarities between LLP and a company such as limited liability, perpetual succession, common seal (optional for LLP), absence of personal liability, registrar of companies as the administrative authority, compulsory registration of incorporation, availability of registration and annual statements for public inspection etc.

There are stipulations as regards minimum capital contribution for a company – a private company should have paid up capital of Rs. 1 lakh and Rs. 5 lakh for a public company. There is no such stipulation as regards LLP. For a company, there should be minimum 2 members. For private company, the maximum number is 50. For LLP, no maximum number is fixed. For a company, quarterly board of directors meeting and annual shareholders meeting is mandatory. These are not stipulated for LLP.

Audit is compulsory for companies and it is required for LLPs if the contribution is above Rs. 25 lakh or if annual turnover is above Rs.40 lakh. The central govt has the powers to inspect records of the company and LLP and to order investigation. The dissolution of LLP is less procedural compared to a company. In case of both company and LLP, dissolution can be voluntary or by order of National Company Law Board.

### **Taxation of LLP**

The Finance Act, 2009 accorded LLPs the same tax treatment as a partnership firm. Thus, an LLP is treated as separate taxable entity and the partners of LLP are exempt from tax in respect of share of profits received from the LLP. Remuneration and interest on capital are tax deductible for the LLP, subject to prescribed limits and conditions, and is taxable for partners as business/professional income. The provisions of MAT (minimum alternate tax) in the case of companies are not applicable to the LLPs.

### **Advantages of LLP**

The growth of services sector also contributed to the development of the flexible types of organizational structures. The LLP structure will be useful for many enterprises in knowledge and technology based fields, for professionals and venture capital funds where risk capital combines with knowledge and expertise, for enterprises engaged in any scientific, technical or artistic discipline or any activity relating to research, design and provision of services, and for Micro, Small and Medium Enterprises.



## Comparison

AREA	LLP	PARTNERSHIP	LTD. CO.
Governing Act	LLP Act, 2008	Partnership Act, 1932	Companies Act, 1956
No. of Partners/ Members	Minimum – 2 Maximum – No limit	Minimum – 2 10 (Banking) & 20 (Others)	Minimum – 2 (7 for Public Companies) 50 (No limit for Public Co)
Legal Entity	Separate legal entity	No separate legal entity	Separate legal entity
Manner of incorporation	Entering into LLP Agreement and Registration with ROC.	By agreement between partners.	By executing MoA and AoA and registering with ROC
Name	Name to end with LLP	Only in the case of registered form (regd) required	Name to end with Pvt. Ltd. Or Ltd.
Min. No. of Directors/ designated partners	2 (at least one must be Indian)	No such requirement	At least 2 directors
Limitation of Liability	Liability limited to capital contribution or as agreed in LLP Agreement.	Unlimited	To the extent of amount due on shares
Common Seal	Optional	Not required	Mandatory

*Your comments and feedback on this publication may be sent to Staff Training College, The South Indian Bank Ltd., Thrissur 680 001 or by E.mail: ho2099@sib.co.in*

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