

MEANING & CONCEPT OF LIMITED LIABILITY PARTNERSHIP

1. 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 is 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 or between the partners and the LLP as the case may be. The LLP, however, is not relieved of the liability for its other obligations as a separate entity.

Since LLP contains elements of both 'a corporate structure' as well as 'a partnership firm structure' LLP is called a hybrid between a company and a partnership.

2. Structure of an LLP

LLP shall be a **body corporate** and a **legal entity** separate from its partners. It will have perpetual succession.

3. Advantages of LLP form

LLP form is a form of business model which:

- (i) is organized and **operates on the basis of an agreement**.
- (ii) provides **flexibility without imposing detailed legal and procedural requirements**
- (iii) enables professional/technical expertise and initiative to combine with financial risk taking capacity in an innovative and efficient manner

4. Other countries where this form is available

The LLP structure is available in countries like **United Kingdom, United States of America, various Gulf countries, Australia and Singapore**. On the advice of experts who have studied LLP legislations in various countries, the **LLP Act** 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.

5. Difference between LLP & "traditional partnership firm"

- Under "traditional partnership firm", every partner is liable, jointly with all the 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, thus allowing individual partners to be shielded from joint liability created by another partner's wrongful acts or misconduct.

6. Difference between LLP & a Company

- 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.

1. Whether the LLP Act is applicable to any specific services like professional services regulated by Statutes?

No. Any two or more persons associating for carrying on a lawful business with a view to profit may set up an LLP.

In the light of various inputs received by this Ministry for applicability of the LLP form to small entities and venture capital funded enterprises, it is proposed that the **framework should not be restricted to professional services alone as was earlier recommended by Naresh Chandra**

Committee. Accordingly, the LLP Act does not restrict the benefit of LLP structure to certain classes of professionals only.

2. Likely users/beneficiaries of the LLP Law?

India has witnessed considerable growth in services sector and the quality of our professionals is acknowledged internationally. It is necessary that entrepreneurship knowledge and risk capital combine to provide a further impetus to our impressive economic growth. Equally the services sector promises an economic opportunity similar to that provided by information technology over the past few years. It is likely that in the years to come Indian professionals would be providing accountancy, legal and various other professional/technical services to a large number of entities across the globe. Such services would require multidisciplinary combinations that would offer a menu of solutions to international clients. In view of all this, the LLP framework could be used for many enterprises, such as:-

- Persons providing services of any kind
- Enterprises in new knowledge and technology based fields where the corporate form is not suited.
- For professionals such as Chartered Accountants (CAs), Cost and Works Accountants (CWAs), Company Secretaries (CS) and Advocates, etc.
- Venture capital funds where risk capital combines with knowledge and expertise
- Professionals and enterprises engaged in any scientific, technical or artistic discipline, for any activity relating to research production, design and provision of services.
- Small Sector Enterprises (including Micro, Small and Medium Enterprises)

☐ Producer Companies in Handloom, Handicrafts sector

3. Whether an entity which has objectives like “charitable or other not for profit objectives” would be able to set up under LLP Act?

No. The essential requirement for setting LLP is ‘carrying on a lawful business **with a view to profit**’.

4. Whether provisions of Indian Partnership Act, 1932 would be applicable to LLPs?

No, these shall not be applicable to LLPs.

5. Why a new legislation for LLP? Why not amendments in Companies Act or Partnership Act are made?

The Companies Act is not suited to the liability and governance structure intended for LLPs. The overall intent of the legislation to regulate widely-held companies is different. Therefore, in accordance with the recommendations of the Irani Committee, it is felt appropriate to bring about a separate legislation for LLPs. The administration and enforcement of partnership firms under the Indian Partnership Act, 1932 is at the **State level**. Besides, a partnership firm involves **full joint and several liability** of the partners. Because of this, many firms/enterprises engaged in biotech, information technology, Intellectual property and other knowledge based sectors find traditional partnerships unsuitable. The traditional partnerships are also considered unsuitable for **multi-**

disciplinary combinations comprising a **large number** of partners, seeking a flexible working environment but with limited liability. LLP structure would promote growth and enable such firms/enterprises expand their trade/business or services across States in India as also abroad.

6. Committees, which have made recommendations for legislation on LLPs in India

The desirability of LLP form has been expressed in the context of small enterprises by :-

- **Bhat Committee** (1972);
- **Naik Committee** (1992);
- Expert Committee on Development of Small Sector Enterprises headed by Sh. **Abid Hussain** in **1997** and
- Study Group on Development of Small Sector Enterprises (SSEs) headed by **Dr. S P Gupta** (**2001**).

Following **Committees set up by M/o Company Affairs** have also recommended for legislation on LLPs:-

- Committee on Regulation of Private Companies and Partnerships headed by Sh. **Naresh Chandra** (2003)
- The Committee on New Company Law (Dr. J.J. **Irani Committee**) (2005)

7. Whether Ministry has adopted a “Consultative Approach” while bringing out the LLP Act?

Yes. The Ministry of Corporate Affairs, on 2nd November, 2005, placed a Concept Paper on LLP Law on its website so that all interested stakeholders may express their opinions on the concepts involved and suggest formulations for the consideration of the Ministry on various aspects of LLP Law. The Concept Paper was also circulated to various concerned Ministries/Departments and autonomous bodies like Comptroller and Auditor General of India (C&AG), Securities and Exchange Board of India (SEBI), Insurance Regulatory Development Authority (IRDA) etc. for their comments. Large number of comments and suggestions were received by the Ministry on the Concept Paper. These were examined in light of international practice/law on the subject. The Act has been prepared keeping in view the Indian requirements.

1. What are the restrictions in respect of minimum and maximum number of partners in an LLP?

A **minimum of two partners** will be required for formation of an LLP. **There will not be any limit to the maximum number** of partners.

2. Whether a body corporate may be a partner of an LLP?

Yes.

3. What are the qualifications for becoming a partner?

Any individual or body corporate may be a partner in a LLP. However an individual shall not be capable of becoming a partner of a LLP, if—

- (a) he has been found to be of unsound mind by a Court of competent jurisdiction and the finding is in force;
- (b) he is an undischarged insolvent; or
- (c) he has applied to be adjudicated as an insolvent and his application is pending.

4. What are the requirements in respect of “Designated Partners”?

Appointment of **at least two** “Designated Partners” shall be mandatory for all LLPs. “Designated Partners” shall also be **accountable for regulatory and legal compliances**, besides their liability as ‘partners, per-se’.

5. Who can be a “Designated Partner”?

Every LLP shall be required to have atleast two Designated Partners who shall be **individuals** and **at least one of the Designated Partner shall be a resident of India**. In case of a LLP 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 LLP or nominees of such bodies corporate shall act as designated partners.

6. Should the number of designated partners resident in India not be more than partners from outside India?

LLPs, particularly those as may be engaged in the services or technology-based sectors, may provide services globally. This may require any number of its partners to locate them abroad. In view of liability structure of partners, designated partners and LLP, clearly provided for in the Act, there does not appear to be any necessity and justification for restriction relating to designated partners to out-number partners located abroad. In fact it may pose unnecessary restriction.

7. Whether there would be any requirement of 'identification number' of Designated Partner? Whether Designated Partners would be subject to any other condition/requirement before they are appointed as such?

Every Designated Partner would be required to obtain a “**Designated Partner's Identification Number**” (DPIN) on the lines similar to “Director's Identification Number” (DIN) required in case of directors of companies. Enabling provisions have been made to prescribe under rules conditions, which would have to be fulfilled by an individual who is eligible to be appointed as a 'designated-partner'.

1. Nature & extent of liability of a partner of an LLP?

Every partner of an LLP would be, for the purpose of the business of the LLP, an agent of the LLP but not of the other partners. Liability of partners shall be limited except in case of unauthorized acts, fraud and negligence. But a partner shall not be personally liable for the wrongful acts or omission of any other partner. An obligation of the limited liability partnership whether arising in contract or otherwise, is solely the obligation of the limited liability partnership. The liabilities of LLP shall be met out of the property of the LLP.

2. What is the liability of a Partner upon reduction of minimum number of members in an LLP?

The Act provides for the minimum of two partners to carry on LLP. If at any time the number of partners of a limited liability partnership is reduced below two and the limited liability partnership carries on business for more than six months while the number is so reduced, the person, who is the only partner of the limited liability partnership during the time that it so carries on business after those six months and has the knowledge of the fact that it is carrying on business with him alone, shall be liable personally for the obligations of the limited liability partnership incurred during that period.

3. Whether a 'partner by holding out' will be liable under the Act?

The Act provides that any person (not being a partner in any LLP), who by words spoken or written or by conduct, represents himself, or knowingly permits himself to be represented to be a partner in a LLP (known as 'partner by Holding out') is liable to any person who has on the faith of any such representation given credit to the LLP, whether the person representing himself or represented to be a partner does or does not know that the representation has reached the person so giving credit.

It has further been provided that where any credit is received by the LLP as a result of such representation, the LLP shall, without prejudice to the liability of the person so representing himself or represented to be a partner, be liable to the extent of credit received by it or any financial benefit derived thereon.

The provisions have also been made in the Act to provide that where after a partner's death the business is continued in the same LLP name, the continued use of that name or of the deceased partner's name as a part thereof shall not of itself make his legal representative or his estate liable for any act of the LLP done after his death.

4. How penal action on errant partners who are not residents of India will be taken?

For statutory compliances provisions of at least one resident designated partner (DP) in every LLP is would ensure that at least one partner is available in India for at least six months for regulatory compliance requirements. The LLPs would have freedom to appoint more than one resident as DP. LLP as an entity would always remain liable for regulatory or other compliances. Civil liability on such a partner would be adjudicated by the courts under civil law which recognises 'foreign awards'. Criminal liability would require adjudication/ enforcement by the courts including using the extradition process. Position would be similar to the cases of directors of companies who are foreign nationals.

1. What are the registration formalities relating to LLPs?

LLPs shall be **registered with** the Registrar of Companies (ROC) (appointed under the Companies Act, 1956) after following the provisions specified in the LLP Act. Every LLP shall have a **registered office**. An **Incorporation Document** subscribed by at least two partners shall have to be filed with the Registrar in a prescribed form. **Contents of LLP Agreement**, as may be prescribed, shall also be required to be filed with Registrar, online.

Contents of LLP Agreement or any changes made therein, if any, may be filed in Form 3 and details of partners/designated partners may be filed in Form 4 in accordance with LLP Rules, 2009.

2. Whether foreigners can incorporate LLP?

Yes, the LLP Act 2008 allows Foreign Nationals including Foreign Companies & LLPs to incorporate a LLP in India provided at least one designated partner is resident of India. However, the LLP/Partners would have to comply with all relevant Foreign Exchange Laws/ Rules/ Regulations/ Guidelines.

3. What are the broad provisions of the Act in respect of names of LLPs?

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. There are also provisions in respect of '**rectification of name**' in case two LLPs have been registered with the same name, inadvertently.

4. For what period a name can be reserved by Registrar?

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 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.

5. Can LLP give any other address (besides its registered office) for the purpose of receiving communication from Registrar?

It has been provided in the Act that a document may be served on a LLP or a partner or designated partner by sending it by post or by any other mode (to be prescribed under Rules) at the registered office **and any other address specifically declared by the LLP** for the purpose in such form and manner as may be prescribed (in the rules). Thus, an LLP shall have option to declare one more address (other than the registered office) for getting statutory notices/letters etc. from Registrar.

1. How the mutual rights and duties of partners inter-se and those of partners and LLPs would be governed?

The mutual rights and duties of partners inter se and those of the LLP and its partners shall be governed by the agreement between partners or between the LLP and the partners. This Agreement would be known as “**LLP Agreement**”.

2. Whether LLP Agreement would be mandatory for all LLPs?

As per provisions of the LLP Act, in the absence of agreement as to any matter, the mutual rights and liabilities shall be as provided for under **Schedule I** to the Act. Therefore, in case any LLP proposes to exclude provisions/requirements of Schedule I to the Act, it would have to enter into an LLP Agreement, specifically excluding applicability of any or all paragraphs of Schedule I.

1. What is the manner in which a partner of an LLP can bring his contribution? How will it be recorded/disclosed in the accounts?

Partner's contribution may consist of **both tangible and/or intangible property and any other benefit to the LLP**. The **monetary value** of contribution of each partner shall be accounted for and disclosed in the accounts of the limited liability partnership in the manner as may be prescribed in the rules.

2. Whether a partner would be able to give loan to or transact other commercial transactions with LLP? What will be his rights and obligations in this regard?

A partner may lend money to and transact other business with the LLP and shall have the same rights and obligations with respect to the loan or other transactions as a person who is not a partner.

3. Whether a partner would be able to transfer his ‘economic rights’?

A partner's economic rights (i.e. rights of a partner to a share of the profits and losses of the LLP and to receive distribution at the time of winding up) in the LLP shall be transferable. However, such a transfer shall not by itself cause the partner's disassociation or a dissolution and winding up of the LLP.

However, such transfer shall not entitle the transferee or assignee to participate in the management or conduct of the LLP's activities. Therefore, the transferee would not be deemed to be a ‘partner’ of the LLP just because a partner has transferred him the ‘economic rights’. For becoming a partner of LLP, the manner specified in the LLP Agreement or the provisions of the Act would have to be followed.

1. How can a person become a partner of an LLP?

Persons, who subscribed to the “Incorporation Document” at the time of incorporation of LLP, shall be partners of LLP. Subsequent to incorporation, new partners can be admitted in the LLP as per conditions and requirements of LLP Agreement.

2. How can an existing partner cease to be a partner of an LLP?

A person may cease to be a partner in accordance with the **agreement** or in the absence of agreement, by giving **30 days notice** to the other partners.

A person shall also cease to be a partner of a limited liability partnership-

- (a) on his death or dissolution of the limited liability partnership; or
- (b) if he is declared to be of unsound mind by a competent court; or
- (c) if he has applied to be adjudged as an insolvent or declared as an insolvent.

Notice is required to be given to ROC when a person becomes or ceases to be partner or for any change in partners.

3. What will be the obligation of a partner in case he changes his name or address?

Every partner shall inform the LLP of any change in his name or address within a period of fifteen days of such change. The LLP, in turn, would be under obligation to file such details with the Registrar w

1. Whether every LLP would be required to maintain and file accounts?

An LLP shall be under obligation to maintain annual accounts reflecting true and fair view of its state of affairs. A "Statement of Accounts and Solvency" in prescribed form shall be filed by every LLP with the Registrar every year.

2. Whether audit of all LLPs would be mandatory?

The accounts of every LLP shall be audited in accordance with Rule 24 of LLP, Rules 2009.

Such rules, inter-alia, provides that any LLP, whose turnover does not exceed, in any financial year, forty lakh rupees, or whose contribution does not exceed twenty five lakh rupees, is not required to get its accounts audited. However, if the partners of such limited liability partnership decide to get the accounts of such LLP audited, the accounts shall be audited only in accordance with such rule.

3. Whether any provisions in respect of 'mandatory insurance' are being proposed in the Act?

No mandatory insurance has been proposed in the Act. It would be difficult to assess insurance requirements of different types and sizes of LLPs. This would depend upon the nature of commercial risk attached with work or assignment handled by each. Applying common insurance requirements across a class of LLPs would result in increasing their costs of operation. Therefore, the underlying concern as to the credit worthiness of the LLP in the event of a contractual default is being addressed through statutory provisions for solvency declaration, disclosure of financial information and audit.

4. Whether any Annual Return would be required to be filed by an LLP?

Every LLP would be required to file annual return in Form 11 with ROC within 60 days of closer of financial year. The annual return will be available for public inspection on payment of prescribed fees to Registrar.

5. Whether the Registrar would have any power to call for information from LLPs?

Registrar would have power to obtain such information which he may consider necessary for the purposes of carrying out the provisions of the Act, from any designated partner, partner or employee of the LLP. He would also have power to summon any designated partner, partner or employee of any LLP before him for any such purpose, in case the information has not been furnished to him or in case the Registrar is not satisfied with the information furnished to him.

6. Which documents will be available for public inspection in the office of Registrar?

The following documents/information will be available for inspection by any person:-

- Incorporation document,
- Names of partners and changes, if any, made therein,
- Statement of Account and Solvency
- Annual Return

The fees for such inspection of an LLP is Rs 50/- and fees for certified copy or extract of any document u/s 36 shall Rs. 5/- per page.

7. How would compliance management (i.e. ensuring that LLPs file their documents with Registrars timely and otherwise comply with other procedural requirements under the Act) be ensured in the Act?

The provisions of the Act require LLPs to file the documents like Statement of Account and Solvency (SAS) and Annual Return (AR) and notices in respect of changes among partners etc. within the time specifically indicated in relevant provisions. The Act contains provisions for allowing LLPs to file such documents after their due dates on payment of additional fees. It has been provided that in case LLPs file relevant documents after their due dates with additional fees upto 300 days, no action for prosecution will be taken against them. In case there is delay of 300 days or more, the LLPs will be required to pay normal filing fees, additional fee and shall also be liable to be prosecuted.

The Act also contains provisions for compounding of offences which are punishable with fine only.

. Please specify the services for which Stamp Duty can be paid through MCA21 system?

Stamp Duty payable on Filing of e-form 1 (including MOA & AOA), 5 and 44 can be paid through MCA21 system.

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