

LLP

A **limited liability partnership (LLP)** is a partnership in which some or all partners (depending on the jurisdiction) have limited liability. It therefore exhibits elements of partnerships and corporations. In an LLP one partner is not responsible or liable for another partner's misconduct or negligence. This is an important difference from that of a limited partnership. In an LLP, some partners have a form of limited liability similar to that of the shareholders of a corporation. In some countries, an LLP must also have at least one "general partner" with unlimited liability. Unlike corporate shareholders, the partners have the right to manage the business directly. As opposed to that, corporate shareholders have to elect a board of directors under the laws of various state charters. The board organizes itself (also under the laws of the various state charters) and hires corporate officers who then have as "corporate" individuals the legal responsibility to manage the corporation in the corporation's best interest. An LLP also contains a different level of tax liability from that of a corporation.

Limited liability partnerships are distinct from limited partnerships in some countries, which may allow all LLP partners to have limited liability, while a limited partnership may require at least one unlimited partner and allow others to assume the role of a passive and limited liability investor. As a result, in these countries the LLP is more suited for businesses where all investors wish to take an active role in management.

There is considerable confusion between LLPs as constituted in the U.S. and that introduced in the UK in 2001 and adopted elsewhere - see below - since the UK LLP is, despite the name, specifically legislated as a Corporate body rather than a Partnership.

NATIONAL VARIATIONS

Canada

The provinces of Quebec, Ontario, Manitoba, Alberta, the territory of Nunavut and most recently Nova Scotia have permitted LLPs for lawyers. In BC, the Partnership Amendment Act, 2004 (Bill 35) permitted LLPs for lawyers and other professionals as well businesses.

China

In China, the LLP is known as a Special general partnership (特殊普通合伙). The organizational form is restricted to knowledge-based professions and technical service industries. The structure shields co-partners from liabilities due to the willful misconduct or gross negligence of one partner or a group of partners.

Germany

The German Partners chaftsgesellschaft or PartG is an association of non-commercial professionals, working together. Though no corporate entity, it can sue and be sued, own property and act under the partnership's name. The partners, however, are jointly and severally liable for all the partnership's debts, except when only some partners' misconduct caused damages to another party - and then only if professional liability insurance is mandatory. The

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Partnerschaftsgesellschaft is not subject to corporate or business tax, only its partners' respective income is taxed.

Greece

An LLP is an approximate equivalent to the Greek EE (Eterorythmi Etaireia), which more closely resembles a Limited Partnership.

India

The Limited Liability Partnership Act 2008 was published in the official Gazette of India on January 9, 2009 and has been notified with effect from 31 March 2009. However, the Act, has been notified with limited sections only. The rules have been notified in the official gazette on April 1, 2009. The first LLP was incorporated in the first week of April 2009.

In India for all purposes of taxation, an LLP is treated like any other partnership firm.

The salient features of the LLP Act, 2008 are as under:-

1. The LLP has an alternative corporate business vehicle that would give the benefits of limited liability but allows its members the flexibility of organizing their internal structure as a partnership based on an agreement.
2. The LLP Act does not restrict the benefit of LLP structure to certain classes of professionals only and would be available for use by any enterprise which fulfills the requirements of the Act.
3. While the LLP has a separate legal entity, liable to the full extent of its assets, the liability of the partners would be limited to their agreed contribution in the LLP. Further, no partner would be liable on account of the independent or unauthorized actions of other partners, thus allowing individual partners to be shielded from joint liability created by another partner's wrongful business decisions or misconduct.
4. LLP shall be a body corporate and a legal entity separate from its partners. It will have perpetual succession. Indian Partnership Act, 1932 shall not be applicable to LLPs and there shall not be any upper limit on number of partners in an LLP unlike an ordinary partnership firm where the maximum number of partners can not exceed 20, LLP Act makes a mandatory statement where one of the partner to the LLP should be an Indian.
5. Provisions have been made for corporate actions like mergers, amalgamations etc.
6. While enabling provisions in respect of winding up and dissolutions of LLPs have been made, detailed provisions in this regard would be provided by way of rules under the Act.
7. The Act also provides for conversion of existing partnership firm, private limited company and unlisted public company into a LLP by registering the same with the Registrar of Companies (ROC)

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8. Nothing Contained in the Partnership Act 1932 shall effect an LLP.
9. The Registrar of Companies (Roc) shall register and control LLPs also.
10. The governance of LLPs shall be in electronic mode based on the successful model of the present Ministry of Corporate Affairs Portal.

Japan

Limited liability partnerships (有限責任事業組合 *yūgen sekinin jigyo kumiai*?) were introduced to Japan in 2006 during a large-scale revamp of the country's laws governing business organizations. Japanese LLPs may be formed for any purpose (although the purpose must be clearly stated in the partnership agreement and cannot be general), have full limited liability and are treated as pass-through entities for tax purposes. However, each partner in an LLP must take an active role in the business, so the model is more suitable for joint ventures and small businesses than for companies in which investors plan to take passive roles. Japanese LLPs may *not* be used by lawyers or accountants, as these professions are required to do business through an unlimited liability entity.

A Japanese LLP is not a corporation, but rather exists as a contractual relationship between the partners, similarly to an American LLP. Japan also has a type of corporation with a partnership-styled internal structure, called a *godo kaisha*, which is closer in form to a British LLP or American limited liability company.

Kazakhstan

An LLP is equivalent to "Жауапкершілігі шектеулі серіктестік" in Kazak

Poland

A close equivalent to limited liability partnerships under Polish law is the *spółka partnerska*, introduced in 2001. This kind of company can be formed only by min. two individuals which doing the Professional services. Other activities are forbidden.

Romania

An LLP is equivalent to the Romanian law vehicle known as a *Societate civilă profesională cu răspundere limitată*.

Singapore

LLPs are formed under the Limited Liability Partnerships Act 2005. This legislation draws on both the US and UK models of LLP, and like the latter establishes the LLP as a body corporate. However for tax purposes it is treated like a general partnership, so that the partners rather than the partnership are subject to tax (tax transparency).

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United Kingdom

In the United Kingdom LLPs are governed by the **Limited Liability Partnerships Act 2000** (in Great Britain) and the **Limited Liability Partnerships Act (Northern Ireland) 2002** in Northern Ireland. A UK limited liability partnership is a corporate body - that is to say, it has a continuing legal existence independent of its members, as compared to a Partnership which may (in England and Wales, does not) have a legal existence dependent upon its membership.

A UK LLP's members have a collective ("Joint") responsibility, to the extent that they may agree in an "LLP agreement", but no individual ("several") responsibility for each other's actions. As with a limited company or a corporation members in an LLP cannot, in the absence of fraud or wrongful trading, lose more than they invest.

In relation to tax, however, a UK LLP is similar to a partnership: it is tax transparent or pass-through, that is to say it pays no UK tax but its members do in relation to the income or gains they receive through the LLP.

It is a unique entity in its synthesis of collective and individual rights and responsibilities and its infinite flexibility - there is in fact no requirement for the LLP agreement even to be in writing because simple partnership-based regulations apply by way of default provisions.

It has to date been closely replicated by Japan - see above - and by the financial centres of Dubai and Qatar. It is perhaps closest in nature to a limited liability company in the United States of America although it may be distinguished from that entity by the fact that the LLC, while having a legal existence independent of its members is not technically a corporate body because its legal existence is time limited and therefore not "continuing".

The LLP structure is commonly used by accountants, as a company may not act as auditor to another company, as well as by firms of solicitors, who are not legally permitted to operate as a company.

More information is available on the official Companies House website.

United States

In the United States, each individual state has its own law governing their formation. Limited liability partnerships emerged in the early 1990s: while only two states allowed LLPs in 1992, over forty had adopted LLP statutes by the time LLPs were added to the Uniform Partnership Act in 1996.

The limited liability partnership was formed in the aftermath of the collapse of real estate and energy prices in Texas in the 1980s. This collapse led to a large wave of bank and savings and loan failures. Because the amounts recoverable from the banks was small, efforts were made to recover assets from the lawyers and accountants that had advised the banks in the early-1980s. The reason was that partners in law and accounting firms were subject to the possibility of huge

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claims which would bankrupt them personally, and the first LLP laws were passed to shield innocent members of these partnerships from liability.

Although found in many business fields, the LLP is an especially popular form of organization among professionals, particularly lawyers, accountants, and architects. In some U.S. states, namely California, New York, Oregon, and Nevada, LLPs can only be formed for such professional uses. Formation of an LLP typically requires filing certificates with the county and state offices. Although specific rules vary from state to state, all states have passed variations of the Revised Uniform Partnership Act.

The liability of the partners varies from state to state. Section 306(c) of the Revised Uniform Partnership Act (1997)(RUPA) (a standard statute adopted by a majority of the states) grants LLPs a form of limited liability similar to that of a corporation:

An obligation of a partnership incurred while the partnership is a limited liability partnership, whether arising in contract, tort, or otherwise, is solely the obligation of the partnership. A partner is not personally liable, directly or indirectly, by way of contribution or otherwise, for such an obligation solely by reason of being or so acting as a partner.

However, a sizable minority of states only extend such protection against negligence claims, meaning that partners in an LLP can be personally liable for contract and intentional tort claims brought against the LLP. While Tennessee and West Virginia have otherwise adopted RUPA, their respective adoptions of Section 306 depart from the uniform language, and only a partial liability shield is provided.

As in a partnership or limited liability company (LLC), the profits of an LLP are allocated among the partners for tax purposes, avoiding the problem of "double taxation" often found in corporations.

Some US states have combined the LP and LLP forms to create limited liability limited partnerships.