

Limited Liability Partnership

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What is LLP

Good hybrid of company and partnership	Good hybrid of partnership and company form of organisation. Removes defects of unlimited liability under partnership and rigidity of provisions as prevalent under Company Law.
Limited Liability, perpetual succession	LLP has limited liability and perpetual succession. LLP is a 'body corporate' having legal entity different from its partners. It can hold property in its own name
Flexibility in operations	Maximum flexibility in respect of internal management, remuneration to partners, specific powers like management power or veto powers to some partners.
Profit motive required	LLP can be formed for carrying out any lawful business with a view to profit . Thus ideal for medium businesses, professionals, joint ventures but not available for charitable organisations.
Partner cannot bind other partners	A partner can bind LLP but not other partners. LLP Agreement can curtails powers, duties and liabilities of some partners.
Who can be a partner?	A company, LLP, foreign LLP and foreign company can be partner of LLP [However, there would be difficulties in repatriation of profits or capital, unless FEMA provisions are amended].
Minimum two partners	Minimum two partners. No limit on maximum number of partners.
No restriction on partnerships	No restriction on number of LLPs of which a person can become a partner
Designated partners	Minimum two partners should be nominated as 'designated partners' to fulfil statutory obligations under LLP Act. Other partners will not be normally held liable, except in case of fraud.
Procedures for formation similar to company	Procedure for incorporation of LLP is similar to incorporation of Company. Incorporation document (parallel to memorandum) and LLP agreement (parallel to Articles of Association) is required to be filed electronically
Very few formalities in running LLP	No formalities of board meetings, general meetings, registration of charges, restrictions on managerial remuneration, issue and transfer of shares, election of directors, restrictions on powers of Board etc.
Accounts	Accounts are to be maintained but small LLP exempt from audit provisions.
E-filing of returns	Electronic Filing of annual return, statement of accounts and solvency is required.
Change in partners	Change in partners is required to be reported within 30 days.
Holding out	Concept of 'holding out' by partner incorporated.
Heavy penalty	Very heavy penalty (of Rs 100 per day) for late filing of returns.

Reconstruction, amalgamation	Provisions of reconstruction, amalgamation and compromise, winding up, inspection and investigation are similar to those under Companies Act.
Conversion of existing company and firms	Existing partnership firms, private companies and unlisted companies can convert themselves into LLP. There will be no capital gains on such conversion to company or its shareholders if conditions as specified in section 47(xiib) of Income Tax Act are satisfied (Only small companies with turnover less than Rs 60 lakhs can take benefit of this provision). Further, issue relating to stamp duty is a cause of worry.
Taxation of LLP	LLP will be taxed the same way as a partnership. The exception is that a partner of partnership firm is liable personally for income tax liability of firm. In case of LLP, all partners are jointly and severally liable for income tax liability, but a partner can escape the liability if he proves that non-recovery cannot be attributed to any gross neglect, misfeasance or breach of any duty on his part.
Website	Visit www.llp.gov.in for registration, filing of documents, instruction kit, write up on LLP etc.

Procedure for Incorporation of LLP at a glance

DPIN	Two partners to be designated as 'designated partners' should apply and get DPIN (Designate Partner Identification Number) from Central Government by applying electronically in form No. 7 and subsequently sending physical forms
Digital Signature	The designated partners should obtain Digital Signature Certificate (DSC) Class II or above from a Certification Agency (CA).
User registration	Register DPIN and DSC with LLP by visiting www.llp.gov.in .
Name availability	Check name availability which is available on the aforesaid website. Apply for reservation of name in e-form 1.
Filing of incorporation documents	After obtaining reservation of name, fill up e-form 2 'Incorporation Document and Statement'. It has to be digitally signed by designated partner and a professional (advocate/practising CA/CS/ICWA). Upload the form and pay fees electronically.
Registration of LLP	LLP will be incorporated by ROC and registration certificate will be granted by Registrar of Companies (ROC) in form No. 16
Filing of information about partners	File form 3 (Information with regard to LLP Agreement) and form 4 (Notice of appointment of partner/designated partner) electronically with fees. The form can be submitted either with form 2 itself or within 30 days of date of incorporation.
Sending of original agreement	Send original copy of LLP Agreement which is duly stamped.
LLP Ready	LLP is now ready for commencing business.

Returns and records required by LLP

Books of Account	LLP should maintain proper books of account.
Minute Book	Minute book should be maintained to record minutes of meetings of

	partners and managing/executive committee of partners.
Change in partners	Any change in partner and designated partner (admission, resignation, cessation, death, expulsion) should be filed electronically in form 4 within 30 days of change with fees.
Supplementary LLP agreement	Such admission and cessation will alter mutual rights and duties of partner shall change. Hence, supplementary LLP agreement will be required which is also required to be filed in e-form 3 within 30 days of change with fees (LLP Agreement can be drafted suitably to avoid this)
Statement of Account and solvency	Statement of Account and Solvency (SAS) is to be filed annually in e-form 8 with required fees. It is to be filed within 30 days from expiry of 6 months from end of each financial year i.e. by 30th October.
Annual Return	Annual Return should be filed with ROC in e-form 11 with filing fees, within 60 days from close of financial year i.e. by 30th May.
Heavy penalty	Very heavy penalty (of Rs 100 per day) for late filing of returns.
Inspection of documents	Incorporation document (form 2), Annual Return (form 11), Statement of Account and Solvency (SAS) (form 8) and Name of partners and changes, if any, made therein (form 4) are available for public inspection on payment of fees [Interestingly, LLP agreement is not available for public inspection].

LLP Agreement

<i>Requirements of agreement</i>	LLP Act, 2008 provides great operational flexibility. In many cases, provisions as contained in LLP Agreement prevail. Technically, LLP Agreement is not mandatory. If there is no LLP agreement, provisions as contained in First Schedule of LLP automatically apply. Practically, the conditions in First Schedule are not acceptable in majority of situations. Hence, each LLP will be required to have LLP Agreement. It is not possible or advisable to have a standard draft for LLP. The requirements and composition of proposed LLP should be considered and then LLP agreement should be drafted.
<i>When to execute agreement</i>	Normally, any agreement by or with LLP can be executed only after incorporation of LLP. However, the LLP agreement is not by or with LLP. It is agreement among partners of LLP about LLP. Hence, it can be executed before incorporation of LLP, though it can as well be executed after incorporation of LLP. The agreement can be amended any number of times. Any amendment has to be filed with Registrar of Companies with filing fee.
<i>Stamp duty payable on LLP agreement</i>	Since LLP Agreement is a new instrument, obviously, it will not find place in any schedule of State Stamp Act. If the entry in schedule simply reads 'Partnership Deed/Agreement', then LLP Agreement can fall under that entry. However, if entry reads 'Partnership deed/agreement under Indian Partnership Act', then obviously LLP Agreement will not fall in that heading. In that case, it should fall under residual entry i.e. 'Any other agreement', and stamp duty will be payable accordingly. Of course, in due course, Stamp Acts of all States will be amended.
<i>e-payment of stamp duty</i>	Provision for e-payment of stamp duty has been made under Companies Act. Till parallel provision is made under LLP Act, the existing provision of physical stamps and physical submission of documents will continue.
General comments on LLP Agreement	

Careful drafting of agreement	Just as a shirt cannot fit all persons, there cannot be a standard LLP agreement which will fit requirements of all types of LLPs. LLP can be of different sizes and for different purposes. Some LLPs may have few partners while some may have huge number of partners. Some LLPs may be in form of family partnerships while some may be in form of Joint Ventures.
Flexibility in agreement	These aspects have to be kept in mind while drafting LLP agreement. The agreement should not be rigid and should provide as much flexibility as possible. More the rigidity, more the problems of operations. Interests of all parties should be kept in mind. Chances of oppression and mismanagement by some partners cannot be ruled out. There can be oppression of majority. These factors should be considered and proper care should be taken.
Rules are for gentlemen	Of course, ultimately, the fact remains that all rules and regulations are for gentlemen (who really do not need them). Crooks will always find ways and means to hoodwink the system.
Types of partners	As per section 18 of Indian Partnership Act, a partner is agent of firm. Section 19 of Indian Partnership Act states that act of partner in usual course of business binds the firm. Thus, any partner can bind the firm. Since firm is responsible for acts of a partner, acts of one partner binds all other partners. Thus, they are 'mutual agents'. However, under LLP, authority of a partner can be restricted by way of LLP agreement. Such restriction may not be required in case of small family managed LLP but should be provided in large firms. LLP Agreement can provide for different categories of partners. Some may be termed as Senior/Managing/Executive Partners, some may be termed as 'Partner' and some may be even 'Junior Partner'.
Veto powers to one or more partners	If one or more partner/s intend to control LLP, the agreement can provide them veto power i.e. LLP agreement can provide that in any meeting of Partners or Senior/Managing/Executive Partners, there will be no quorum if they are not present and no resolution can be passed without their affirmative note.
Executive/Managing Committee in case of large LLP	In case of LLP with large number of partners, it is unworkable to give executive or operational powers to all partners. Hence, it may be advisable to form a committee of senior partners which may be termed as Executive/Managing Committee. In my opinion, the number should not exceed five or seven to make it manageable.
Number of partners to execute LLP Agreement	Two persons are sufficient to incorporate LLP. If number of partners are expected to be large, it may be advisable to incorporate LLP with two partners and then increase the number of partners later on. This will be more convenient than to incorporate LLP with large number of partners. In such case, Incorporation document and LLP Agreement may be executed by two partners. Of course, legally, there is no limit on number of partners who can sign Incorporation document and LLP agreement.
Various clauses of agreement	LLP agreement should be drafted considering the requirements and business model of proposed LLP.
Drafting of LLP agreement to suit form 3	Columns 7 to 20 of Form 3 are in respect of information with regard to LLP agreement. It is highly advisable to draft LLP Agreement in same sequence as far as possible, so that filling form 3 and its

