



# LIMITED LIABILITY PARTNERSHIP

IMPORTANT PROVISIONS

## ABSTRACT

The Indian Legislature, keeping in view, the international business trends where a range of services is being offered by professionals and businesses in the form of Limited Liability Partnerships, has enacted the much awaited Limited Liability Partnership Act. Although the Limited Liability Partnership Act came into force in the year 2009, its importance has increased only very recently after the insertion of some of the harsh provisions in Companies Act, 2013.

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## **Limited Liability Partnership**

A Limited Liability Partnership is a hybrid between a company and a partnership that, as the name suggests, provides the benefits of limited liability and allows its members the flexibility of organizing their internal structure as a partnership based on a mutually arrived agreement.

### **Salient Features of LLP**

The LLP has Separate Legal Entity i.e. the LLP and the partners are distinct from each other. Minimum of 2 partners are required to form a LLP. However, there is no limit on the maximum number of partners. There is no requirement of Minimum Capital Contribution by partners. 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.

### **Difference between LLP & Partnership Firm**

The basic difference between LLP and Partnership is with regard to the Liability of the Partners. Further, the process of formation of LLP is much complicated in comparison to partnership.

In a 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.

However, under the LLP Act, liability of the partner is limited only to his agreed contribution. Further, no partner is liable on account of the independent or unauthorized acts of other partners, thus allowing individual partners to be shielded from joint liability created by another partner's wrongful acts or misconduct.

### **Difference between LLP & Company**

New Companies Act, 2013, contains a lot of formalities for companies and for non-compliance penalties are so heavy that it has become very difficult for the companies to make compliance strictly. However, in LLP, the compliances are minimal. Therefore, it is easy and cost effective to manage LLP in comparison to Company.

### **Benefits of forming a LLP**

LLP Business Structure also has the advantage of Internal Flexibility. As in traditional partnership, the internal structure of LLP can be organized as per mutual agreement.

The Liability of each partner is limited to his share as written in the Agreement. It has a Low Cost of Formation and is Easy to Form.

The Partners are not liable for the acts of each other and can be held liable only for their own acts. Less Restrictions and Compliance are enforced on a LLP by the Govt as compared to the restrictions enforced on a Company.

As a Juristic Legal Person, a LLP can sue in its name and be sued by others. The partners are not liable to be sued for dues against the LLP.

It provides limited liability to its partners. Though personal Liability arises in case of wrongful acts or omissions, a partner is not personally liable for such acts or omissions of other partner. The requirements as to Board Meetings, Resolutions, Annual meetings, etc. are not there in case of LLP. Since LLP is a separate legal entity, its existence is not affected by the entry or exit of partners. There is less paperwork in case of LLPs, even the formation of a partnership agreement is not mandatory; the Act provides for default provisions in its Schedule I. The filing requirements are also less as compared to a company.

### **Disadvantages of Forming a LLP**

- The major disadvantage of forming a LLP is that it cannot come out with its IPO and raise money from the Public which a Company form of organization can easily do.
- It requires lot of formalities as it is regulated by Registrar of Companies.
- Winding up of LLP is not easy like dissolution of partnership firms. Its winding up requires lot of formalities and time, it is a lengthy process.

### **Procedure to Convert Private Company to LLP**

- Firstly, Obtain designated partner identification number (DPIN) for the designated partners. The application for allotment of DPIN shall be made online in (E-Form 7).
- The name with which LLP is to be incorporated is to be decided.
- The registrar will approve the name applied for provided the name is not either undesirable in the opinion of the Central Government or that is identical with or that which too nearly resembles to the

name of any existing partnership firm or a LLP or a body corporate or a trade mark registered or pending registration under the Trade Marks Act, 1999.

- Application shall be made in (E-Form 1) for the availability of the proposed name with the Registrar.
- Applicable fees has to be paid by of credit card or net banking.
- Application for conversion has to be made in (E-Form 18) with the following attachments :-
  - Statement of shareholders (may be attached in a tabular form)
  - Incorporation Document & Statement in Form 2 filed electronically.
  - Statement of Assets and Liabilities of the company duly certified as true and correct by the Chartered Accountant in practice.
  - List of all the creditors along with their consent to the conversion (may be given in the form of a tabular statement).
  - Approval of the governing council (In case of professional private limited companies)
  - NOC from Income Tax authorities.
  - Approval from any other body/authority as may be required.
  - Particulars of pending proceedings from any court/Tribunal etc.
  - Rejection letter of Registrar of any earlier application for conversion.
  - Particulars of convictions, rulings, orders, judgement of Courts in favour or against the private limited company which are subsisting.
  - Other optional attachments as may be required.
- In case the registrar is satisfied that the application is in order and that it complies such regulations, procedures as may be applicable he will register the conversion.
- Registrar will issue the certificate of registration on conversion of the private limited company into LLP in Form 19 of the LLP Rules & Forms 2008.
- On issue of certificate of registration the new LLP thus formed shall within 15 days from the date of registration inform the concerned Registrar of Companies with whom the erstwhile private limited company was registered under Companies Act, 1956 about such conversion in Form 14 of the LLP Rules & Forms 2008.
- Form 14 must be accompanied by the following attachments:
  - Copy of Certificate of Incorporation of LLP formed.
  - Copy of incorporation document submitted in Form 2 (with the Registrar of Firms)
  - Other optional attachments as may be required.
- The limited liability partnership shall ensure that for a period of twelve months commencing not later than fourteen days after the date of registration, every official correspondence of the limited liability

partnership bears the following, namely:—

- a statement that it was, as from the date of registration, converted from a company into a limited liability partnership; and
  - the name and registration number of the company from which it was converted.
- Any limited liability partnership which contravenes the above mentioned provisions shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees and with a further fine which shall not be less than fifty rupees but which may extend to five hundred rupees for every day after the first day after which the default continues.

### **Procedure to convert a Firm to LLP**

The procedure to convert a firm into a LLP is similar to procedure of conversion of company into LLP as mentioned above. However, the form applicable for the conversion of firms into LLP will be E-form 17 in place of E-form 18.

### **Taxation of LLP's in India**

The Government has notified that LLP's would be taxed in the same form as Partnerships i.e. Tax would be levied on the LLP and the partners would be exempt from Tax as LLPs are to be assessed as partnership firms and therefore, provisions of section 40(b) of the Income Tax Act related to remuneration and interest paid to partners are also applicable to LLPs.

MAT and Dividend Distribution Tax is not required to be paid by the LLP. It cannot avail the benefit of presumptive taxation scheme under section 44AD or 44AE of the Income Tax Act, 1961. However, LLP is subject to Alternate Minimum Tax u/s 115JC of the Income Tax Act, 1961.

### **Charging of capital gain on conversion**

On conversion of private limited company into LLP, there will be no capital gain as per provision of section 47b (xii) of Income Tax Act subject to following conditions –

- (a) all the assets and liabilities of the company immediately before the conversion become the assets and liabilities of the limited liability partnership;
- (b) all the shareholders of the company immediately before the conversion become the partners of the limited liability partnership and their capital contribution and profit sharing ratio in the limited liability partnership are in the same proportion as their shareholding in the company on the date of conversion;
- (c) the shareholders of the company do not receive any consideration or benefit, directly or indirectly, in any form or manner, other than by way of share in profit and capital contribution in the limited liability partnership;
- (d) the aggregate of the profit sharing ratio of the shareholders of the company in the limited liability partnership shall not be less than fifty per cent. at any time during the period of five years from the date of conversion;
- (e) the total sales, turnover or gross receipts in business of the company in any of the three previous years preceding the previous year in which the conversion takes place does not exceed sixty lakh rupees; and

(f) No amount is paid, either directly or indirectly, to any partner out of balance of accumulated profit standing in the accounts of the company on the date of conversion for a period of three years from the date of conversion.

Further, the successor LLP would be entitled to carry forward and set off un absorbed depreciation if the above conditions are fulfilled.

### **Audit of LLP**

LLP whose turnover exceeds Rs. 40 Lakhs in any financial year or whose contribution exceeds Rs. 25 lakhs are required to get their accounts audited by Chartered Accountants in practice as per LLP rules 24(8) & 9

LLPs whose turnover exceeds Rs. 1 crore in any financial year or whose gross receipt in probation exceeds 25 lakh rupees are also required to get their accounts audited as per the provisions for section 44 AB of the Income Tax Act.

### **CONCLUSION**

The passing of the Limited Liability Partnership Act, 2008 is a recognition of the changing needs of the businesses in today's times. If it is implemented properly, the introduction of the LLP will provide a helpful new option for professional partnerships which are anxious about their exposure to liability. In view of the growth of Indian Service industry in recent times, LLPs would further contribute to the growth of the service industry and a large number of existing companies, public as well as private, are expected to convert into LLPs with a view to have access to the benefits of the LLP. The Government of India has made an endeavour to create a facilitating environment for entrepreneurs, service providers and professionals to meet the global competition; however it needs to be seen how far the change is useful.