

Incorporation of LLP : Procedures & Advantages

Binoy Chacko
Partner, BG & Associates
Co-Founder, CompaniesInn.com LLP

What is Limited Liability Partnership (LLP)?

India Act

✓ a body corporate formed and incorporated under this Act and is a legal entity separate from that of its partners

Singapore Act

✓ body corporate which is formed by being registered under this Act and which has legal personality separate from that of its partners

UK Act

✓ a body corporate (with legal personality separate from that of its members) which is formed by being incorporated under this Act

What for LLP?

Sec.11.a

Two or more persons associated for carrying on a lawful business with a view to profit shall subscribe their names to an incorporation document

LLP can do any lawful business to any extent.

LLP Act 2008

- ✓ LLP Act 2008 Notified on 7th January 2009
- ✓ 81 Sections and 3 Schedules
- ✓ Sec.2.n : Limited Liability Partnership Means a partnership registered under this act
- ✓ Sec.3.1: Limited Liability Partnership is a body corporate formed and incorporated under this Act and is a legal entity separate from that of its partners
- ✓ Sec.4: Provisions of the Indian Partnership Act, 1932 shall not apply to a limited liability partnership
- ✓ **LLP IS NOT A 'PARTNERSHIP' UNDER PARTNERSHIP ACT 1932**

LLP Registration in India

- ✓ Registration Started in April 2009
- ✓ Started with Centralized Registration at Delhi. 100% online registration process
- ✓ First LLP was registered on 2nd April 2009 - HANDOO & HANDOO LEGAL CONSULTANTS LLP
- ✓ Forms released on after 15th April.
- ✓ First online Registration on 24/04/2009 - COMPANIESINN CONSULTING LLP
- ✓ Decentralized Registrations by ROC from June 2012
- ✓ 18000+ LLPs Registered on date

LLP – Basic Requirements

- ✓ Minimum 2 Partners (individuals, companies or LLPs)
- ✓ Minimum 2 Designated Partners (Sec.7- only individuals) one of them should be a resident in India
 - ✓ Incase of Company / LLP being a Partner, Nomination / authorization required
- ✓ No Limit on Maximum Limits
 - Partners: Persons who own the LLP and manage it.
 - Designated partners - Responsible for compliance under the LLP Act

LLP – Basic Requirements

- ✓ All the partners should have a PAN
- ✓ Designated Parties should have a DIN (Previously DPIN)
- ✓ Digital Signature Certificate (DSC) for one Designated Partner
- ✓ LLP to have an address for Registered Office
- ✓ Contribution
 - ✓ No Minimum Requirements
 - ✓ Each partner to contribute

Incorporation of LLP – Process:

- ✓ DIN and DSC
- ✓ LLP Name Application – Form 1
- ✓ name of the LLP should end with the words "LLP" or "Limited Liability Partnership".
- ✓ LLP Name Guidelines Rule 18 of LLP Rules
- ✓ Once approved, the name will be reserved for 90 days

Incorporation of LLP – Process:

Execution of LLP registration documents & Form 2

- ✓ Consent of Designated Partners in Form 9
- ✓ LLP Subscription Sheet (Column 15 - Form 2 Annexure) signed by All partners and witnessed by a Professional
- ✓ Address Proof for Registered Office
 - ✓ NoC from the Address Owner
 - ✓ List of Documents accepted by ROC
- ✓ ROC to issue COI in digital form. No physical certificate by the ROC office

LLP Agreement

Sec.2.0 - Definition : "limited liability partnership agreement" means

- ✓ any written agreement between the partners of the limited liability partnership or
- ✓ between the limited liability partnership and its partners
- ✓ which determines the mutual rights and duties of the partners and their rights and duties in relation to that limited liability partnership

LLP Agreement

✓ Sec.23.1

- ✓ the mutual rights and duties of the partners of a limited liability partnership, and
- ✓ the mutual rights and duties of a limited liability partnership and its partners, shall be governed by the limited liability partnership agreement between the partners, or between the limited liability partnership and its partners

✓ Sec.23.4

- ✓ In the absence of agreement as to any matter, the mutual rights and duties of the partners and the mutual rights and duties of the limited liability partnership and the partners shall be determined by the provisions relating to that matter as are set- out in the **First Schedule**

LLP Agreement

Notes on Clauses of Sec.23

In the absence of any such agreement, the mutual rights and duties of the partners of LLP inter se and that of the LLP and its partners shall be determined as set- out in the **First Schedule**'

Column 15 - Form 2 Annexure

.....and have entered **or agreed to enter into a LLP agreement in writing**.....

- **Partners are compelled to file an agreement by above declaration with in 30 days of Incorporation**

LLP Agreement

Stamping of LLP Agreement

- ✓ It is a written agreement between the partners / LLP & Partners
- ✓ 2009-2012 – LLP Agreement was stamped as ‘General Agreement’
- ✓ *MCA Clarification dated 21.08.2012 – Stamping as Partnership Agreement – Against spirit of Definition*

LLP Name

Sec.15

- ✓ Name to end with LLP / Limited Liability Partnership
- ✓ Name should not be undesirable (Rule 18)
- ✓ Identical / too nearly resembling to that of any other **partnership firm** / LLP / **Body Corporate** / Trademark / Trademark Application
 - Names of Partnerships and Company Incorporated outside India are protected under LLP Act
 - MCA issued an internal circular to do Google Search for allotment of LLP Name.

LLP Name Guidelines

- ✓ Rule 18 specifies guidelines for LLP Name.
- ✓ Company Name Guidelines 2011 is not applicable to LLP

✓ **Note to Form 1 – Clause 7**

If the business activities consists of *banking, insurance, venture capital, mutual fund, stock exchange, asset management, architect, architecture, merchant banking, securitization and reconstruction, chit fund and non banking financial activities*, a copy of the in-principle approval of the regulatory authority should be attached with Form 2

Many of these cases, there is no process to get in-principle approval

LLP Name reservation by Foreign Body Corporate

- ✓ A LLP / Company registered outside India can reserve an LLP Name by filing Form 25
- ✓ Reservation shall be valid for three years and renewable

LLP and FDI

- ✓ FDI in LLP is allowed through **Government approval route**, only in Sectors/activities where 100% FDI is allowed, through automatic route
- ✓ LLPs with FDI will not be allowed in agricultural/plantation activity, print media or real estate business.
- ✓ Company, having FDI, can make downstream investment in an LLP only if both-the company, as well as the LLP- are operating in sectors where 100% FDI is allowed, under automatic route
- ✓ LLPs with FDI will not be eligible to make any downstream investments

LLP and FDI

- ✓ Foreign Capital participation in LLPs will be allowed only by way of cash consideration, received by inward remittance
- ✓ Investment in LLPs by Foreign Institutional Investors (FIIs) and Foreign Venture Capital Investors (FVCIs) will not be permitted.
- ✓ LLPs will also not be permitted to avail External Commercial Borrowings (ECBs).
- ✓ Conversion of a company with FDI, into an LLP, will be allowed only with the prior approval of FIPB/Government.

LLP – Rights of Partners

➤ **Economic Rights**

- ✓ Right to Profit participation
- ✓ Right to receive distributions on dissolution

➤ **Non Economic Rights**

- ✓ Right to Management
 - ✓ Management /Profit / Distribution Rights subject to LLP Agreement
 - ✓ Special Management Rights / profit rights Disproportionate to % Capital contribution can be allowed.
-
- ✓ LLP Rights are transferable / assigned wholly or Part
 - ✓ Transfer of Rights does not amount to disassociation
 - ✓ Transferee/ assignee of Profit / Distribution Rights does not entitle management rights unless specifically stated in assignment / transfer deed.

LLP Advantages

Criteria	Company	LLP
Capital Requirements	Minimum authorized and paid up capital is Rs.1 lakh	No minimum capital requirements
Withdrawal of Capital	Once paid up, capital cannot be withdrawn by shareholders without the approval of court. Company can buy back the shares subject to Companies Act.	Partners can withdraw capital subject to LLP agreement. It is also possible for a partner to reduce contribution liability after giving notice to creditors
Interest on capital	Interest on capital can be claimed only for infrastructure company etc. and subject to permission from the Government of India.	LLP can provide interest on capital without any approval subject to LLP Agreement.

LLP Advantages

Criteria	Company	LLP
Termination of ownership	A shareholder (member) can terminate membership by transferring the shares in his name to any person subject to conditions in Articles of the company. A shareholder cannot resign from the company.	A partner continues as a partner in the LLP even after transferring all his rights in the LLP unless LLP agreement provides otherwise. A partner can even resign from the LLP.
Removal from the ownership	It is not possible to remove a shareholder from the company by others.	It is possible to remove a partner from the LLP subject to the LLP agreement.
Directors / Designated Partners	A director need not be a shareholder.	Designated Partner should be a partner in LLP.

LLP Advantages

Criteria	Company	LLP
Management	Management of Company is vested with Board of Directors elected by shareholders	LLP is managed by partners as per LLP agreement. Partners can delegate management power to a management team or single partner
Meetings for Decisions	Operational decisions are taken at Directors' meeting and directors are required to meet once in every quarter and general meeting of shareholders to be conducted once in a year mandatorily.	No such requirements of meetings. Decision process as per LLP agreement.
Remuneration	Directors can take remuneration. No restriction in Companies Act	Working partners can take remuneration subject to LLP agreement

LLP Advantages

Criteria	Company	LLP
Tax Rate	Corporate tax is applicable to limited company @ 32.44% on net profit of the company	'Firm' tax is applicable to LLP @ 30.90% on net profit of the company.
Dividend Distribution Tax (DDT)	Profit if distributed as Dividend, it will attract Dividend Distribution Tax (DDT) @ 16.45%	There is no DDT. Profit after tax will be credited to partners' account and it will not be taxable in the hands of partners again.
Audit Requirements	Accounts to be audited by a Chartered Accountant whether the company does any business not.	Accounts to be audited by a Chartered Accountant only if the turnover exceeds Rs.40 lakh or contribution exceeds Rs.25 lakh.

LLP Advantages

Criteria	Company	LLP
Registers and Records	Limited Company is required to maintain lot of registers, records and to keep minutes of board meetings and general meetings from time to time irrespective of doing business or not.	LLP is not required to maintain any registers, records and minutes unless specifically mandated by LLP agreement. Partners are at liberty decide the requirements.
Maximum number of owners	200 is the maximum number of shareholders allowed pvt cos	No such limit. An LLP can have any number of partners

LLP Compliances

A. Filing of Annual Return

- ✓ Annual Return (Form 11) within 60 days of closure of its financial year.
- ✓ An LLP has to close its financial year on every 31st March. Annual Return is to be filed on or before 30th May every year.
- ✓ LLP having more than five crore rupees or contribution more than fifty lakh rupees shall be accompanied with a certificate from a Company Secretary in practice

LLP Compliances

B. Statement of Accounts and Solvency (Accounts) LLP (Form 8)

- ✓ Within 30 days from the end of 6 months of financial year (30th October every year)
- ✓ In case annual turnover exceeds Rs.40 lakhs or contribution exceeds Rs.25 lakhs, accounts to be audited by a CA

Sec.69 - Delay in filing the any document / Returns will attract a penalty of Rs.100 per day

LLP Compliances – Other Forms / Returns

Notice of appointment, cessation, changes in designated partner or partner and consent to become a partner/designated partner	Form 4
Notice of appointment, cessation, change in particulars of a partners	Form 4A
Notice for change of name	Form 5
Form for intimating other address for service of documents	Form 12
Notice for change of place of registered office	Form 15
Application to the Registrar for striking off name	Form 24
Application for compounding of an offence under the Act	Form 31

LLP – Few Corrections

- ✓ LLP forms refers to DPIN for DIN

- ✓ Form 2:
 - ✓ Details of Body Corporate as designated partners – Only individuals can be DP
 - ✓ Contribution can only be Round figure % not decimals

- ✓ Form 3
 - ✓ Maximum number of partners is 200
 - ✓ Sec.21 states – LLP shall file information on Agreement. Form 3 mandates Copy of Agreement

- ✓ Form 8 Appendix– Creation / Modification / Satisfaction of Charges
 - ✓ Act / Rules does not contain any provisions

Thank You