



Limited Liability Partnership : A Hybride Form of Business Organisation

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ABSTRACT

The most known form of business organizations are sole proprietorship, partnership, company form of organization and non-profit organization. Based on the nature of business, its volume of trade, financial requirements an investor chooses the form of business organization which most suits to his requirements. The company form of business organization is most popular amongst all. But professionals like Chartered Accountants, Company Secretaries, Cost Accountants, Advocates, and Doctors are regulated not only by the legal entity structure under which they render services but also by their governing statutes of which they are members. These governing statutes do not allow them to operate as a corporate body even though they are contributing significantly to the development and growth of economy.

In a partnership, main limitation are membership limits, unlimited liability, mutual agency and lack of perpetual succession. Whereas in company form of organization enormous compliances and administrative requirement coupled with high capital requirement acted as a deterrents in formation of a company. Hence emanated the need for a HYBRIDE FORM OF BUSINESS ORGANISATION to bring the emerging entrepreneurs at par with the international competitors and enable the new entrants to establish business operations in India.

This notion gave birth to the LLP framework and it was recognized as a business organization by LIMITED LIABILITY PARTNERSHIP ACT, 2008 (LLP ACT) administered by the Registrar Of Companies in India.

Keywords : Patnrship, Company, Limited Liability Partnership

1. INTRODUCTION:

The most known form of business organizations are sole proprietorship, partnership, company form of organization and non-profit organization. Based on the nature of business, its volume of trade, financial requirements an investor chooses the form of business organization which most suits to his requirements. The company form of business organization is most popular amongst all. But professionals like Chartered Accountants, Company Secretaries, Cost Accountants, Advocates, and Doctors are regulated not only by the legal entity structure under which they render services but also by their governing statutes of which they are members. These governing statutes do not allow them to operate as a corporate body even though they are contributing significantly to the development and growth of economy.

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This notion gave birth to the LLP framework and it was recognized as a business organization by LIMITED LIABILITY PARTNERSHIP ACT, 2008 (LLP ACT) administered by the Registrar Of Companies in India. On 9th January 2009, the Government Of India passed an Act named " THE LIMITED LIABILITY PARTNERSHIP ACT, 2008 ". The first LLP was registered on April 2, 2009.

2. MEANING OF LIMITED LIABILITY PARTNERSHIP :

LLP is a form of business organization in which the partners enjoys the limited liability to the extent of their interest in the partnership. It enjoys the status of company so enjoys the

perpetual succession and still having the organizational suppleness and tax treatment of a partnership constituting the most recent epitomization of regulatory innovation.

3. KEY ELEMENTS OF LIMITED LIABILITY PARTNERSHIP :

- Every LLP shall have at least 2 partners and there is no limit for the maximum numbers of partners. The partners to LLP can be an individual as well as body corporate.
- Every LLP shall have at least 2 Designated Partners and at least one of them shall be a Resident in India. If one or more of the partners of a LLP are body corporate then nominee of such ' BODY CORPORATE ' shall act as a designated partners.
- No limit on number of LLP of which a person can become a partner.
- Any individual or a body corporate can become a partner in LLP except in case of an individual, he should not be

1. Found to be of unsound mind or
2. An undischarged insolvent or
3. A person who has applied to be adjudicated as insolvent and the application is pending

- Incorporation document acts as like the Memorandum Of Association and LLP agreement acts as a Articles Of Association and should be subscribed by at least two partners, e-filed on LLP portal.
- Every LLP requires to have a Registered Office.
- As per section 34 (2) of LLP ACT, 2008, an LLP must prepare a " Statement Of Accounts " and " Solvency Statement " within a period of 6 months from its end.
- Every LLP must file an annual return (form 10) with the Registrar within 60 days of the end of the financial year otherwise heavy penalty is imposed for late filing of returns viz Rs. 100 for each day of default continues.
- LLP shall maintain the prescribed Books Of Accounts re-

lating to its affairs on cash or accrual basis as per the Double Entry System of Accounting.

- The accounts of every LLP is required to be audited except in the following cases:
1. If the turnover of the LLP does not exceeds Rs. 40,00,000 in any financial year or
 2. If the contribution by partners in total does not exceeds Rs. 25,00,000. However, Central Government may exempt certain class of LLP from compulsory audit provision.

- Ministry of Corporate Affairs and Government of India alongwith ROC is the administrating authority of LLP
- The Central Government has been empowered to apply any of the provisions of the Companies Act, 1956 to LLPs with suitable changes or modification. [section 67 of LLP Act, 2008]. But, provisions of Indian Partnership Act, 1932 will not apply to LLP [section 4 of LLP Act, 2008].
- It is believed that LLP Act is necessary to form partnership among professionals only. As such, LLP Act does not contain any such restrictions. LLP can be constituted for any ' business' having profit motive.

4. PATRNSHIP,COMPANY,LIMITED LIABILITY PARTNERSHIP:

NO.	PARTICULARS	PATRNSHIP	COMPANY	LIMITED LIABILITY PARTNERSHIP
1	Statute	It is governed by the Indian Partnership Act, 1932	It is governed by the Companies Act, 1956	It is governed by the LLP Act, 2008
2	Registration	Registration of partnership is option	Registration of company is mandatory	Registration of LLP is mandatory
3	Creation	It is created by contract	It is created by law	It is created by law
4	Separate legal entity	It is not a separate legal entity	It is a separate legal entity under the companies Act, 1956	It is a separate legal entity under the Limited Liability Partnership Act,2008
5	Name of entity	Any name as per choice	Name of the company should end with word 'Ltd' or 'pvt Ltd' as the case may be	Name of LLP firm should end with the word ' LLP'
6	Cost of formation	The cost of formation is negligible	Minimum statutory fee for incorporation of private company is Rs. 6000 and for public company is Rs. 19000	Minimum cost of formation of LLP is Rs. 800 only
7	No. of participants	Minimum 2 partners and maximum 20 partners	Minimum 2 members and maximum 50 members in case of private company	Minimum 2 partners and maximum limit is not specified
8	Charter Document	Partnership Deed	MOA and AOA	LLP Agreement
9	Perpetual succession	It does not have a perpetual succession as it depends upon the will of partners	It has perpetual succession. Members may come and go but company goes forever	It has a perpetual succession
10	Common seal	Not required	optional	Optional
11	Foreign participation	Foreign National cannot form partnership in India	Foreign National can be a member in a company	Foreign National can be a partner in a LLP
12	Principal / agent Relationship	Partners are agents of the firm and other partners	The directors act as agents of the company and not of members	Partners act as agents of LLP and not of the other partners
13	Incorporation formalities	In case a registered partnership firm, partnership deed alongwith form/ affidavit required to be filled with Registrar of Firms	Various e-forms alongwith MOA and AOA are filed with ROC	Various e-forms and the LLP Agreements are filed with the Registrar of LLP
14	Time limit	Approximately 7 days to incorporate	Approximately 10 days to incorporate including time taken to obtain DIN	Approximately 10 days to incorporate including time taken to obtain DPIN
15	Filing of Annual return	Not compulsory	compulsory	compulsory
16	Sue and Be sued	Only registered firm can sue and can be sued in its own name	Company can sue and be sued in its own name	A LLP can sue and be sued in its own name
17	Admission of minor as participants	Minor can be admitted as partners for the benefites of partnership only	Legal guardian of minor can held the shares on behalf of the minor	Minor cannot be admitted in the LLP
18	Management	Management is done by the working partners (minimum 1)	Management is done by BOD (minimum 2)	Management is done by designated partner (minimum 2)
19	Liability of partners	Unlimited	Generally limited to the amount of shares subscribed	Limited to the extent of their contribution towards LLP except in case of intentional fraud or wrongful acts
20	Transfer / inheritance of rights	Not transferable In case of death the legal heirs receives the financial value of share	Ownership is easily transferable	Regulation relating to transfer are governed by the LLP Agreement
21	Loans and advances to the participants	Not taxable	Taxable as deemed dividend u/s 2(22)(e) of the Income Tax Act,1961 if certain conditions are met	It is not taxable except in the case of private company converted into LLP for the first 3 years after conversion

22	Distribution of profit	No tax is paid by the partnership firm. It is also exempted from tax in the hands of partners	Private company has to pay DDT on dividend. It is exempt in the hands of shareholder	No tax is to be paid by LLP. Profit is exempt in the hands of partners
23	Tax liability	Income of partnership is taxed at a flat rate of 30% plus education cess as applicable	Income of company is taxed at a flat rate of 30% plus surcharge as applicable	Income of LLP is taxed at a flat rate of 30% plus education cess as applicable
24	Cessation as partners/ member	A person can cease to be a partner as per the agreement	A member can cease to be a member by selling shares	A person can cease to be a partner as per the LLP agreement or in the absence of the same by giving 30 days prior notice to the LLP
25	Dissolution	By agreement, mutual consent, insolvency certain contingencies and by court order	Voluntary or by order of National company Law tribunal	Voluntary or by order of National company Law tribunal

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