

Your Initial Guide towards your Business Dream

Beginners Guide to Limited Liability Partnership



- ***Reduce your Taxes***
- ***Protect your Assets***
- ***Minimize your Liability***
- ***Build Business Credibility***

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The Government of India has introduced the concept of Limited Liability Partnership in India with effect from 31st March 2009. Limited Liability Partnership is new form of business apart from the existing business forms like company and partnership. Prior to being introduced in India, Limited Liability Partnership is already a renowned form of business in most of the developing countries like UK, USA, Singapore etc. The Indian Limited Liability Partnership Act is broadly based on UK LLP Act, 2000 and Singapore LLP Act, 2005.

A Limited Liability Partnership, popularly known as LLP combines the advantages of both the Company and Partnership into a single form of organization. This new form to structure your business provides the advantage of limited liability to the partners with more credibility as compared to the erstwhile partnership firms. Over the corporate structure LLPs have the benefit of lesser compliances.

LLPs have been basically famed to provide organized structure to micro, small, and medium enterprise sector of the Indian economy.

This guide has been prepared to present you with an overview of Limited Liability Partnership and to help you understand the basic character of this new form of business..

We hope that you will find this guide useful for your purpose.

For any clarification/feedback, please feel free to write to shipra@indiacp.com

Team LLPonline.in

Snapshot on Limited Liability Partnership

- *Limited Liability Partnership was introduced by way of Limited Liability Partnership Act 2008, notified on 1st April 2009*
- *Limited Liability Partnership Act 2008 contains 71 sections , 4 schedules and 31 forms*
- *Limited Liability Partnership is hybrid form of business carrying features of both a Company and a Partnership.*
- *Liability of Partners under Limited Liability Partnership is restricted to the amount contributed in the LLP except in case of fraud.*
- *Limited Liability Partnership can be used only for the purpose of carrying profitable business.*
- *Minimum 2 partners are required to form a Limited Liability Partnership.*
- *Limited Liability Partnership has been provided the freedom to define their rules and regulations and therefore not regulated to that extent.*
- *Limited Liability Partnerships are governed by the LLP Agreement.*
- *Contributions by Partners may be tangible, intangible, movable or immovable.*
- *Limited Liability Partnership are taxed as Partnership under the Income Tax Act 1961*
- *Existing Companies & Partnership can convert themselves into Limited Liability Partnership.*
- *Limited Liability Partnerships are required to undertake certain annual filings every year*
- *Audit of accounts is not mandatory in case of Limited Liability Partnership.*
- *Admission/cessation of Partners does not dissolve Limited Liability Partnership*
- *Limited Liability Partnership has its own entity distinct from its partners.*
- *Currently Foreign Investment is not allowed under Limited Liability Partnership*
- *Limited Liability Partnership can be wound up voluntary or by the orders of the Tribunal.*
- *Governing Body of LLP is Registrar of LLP, based in New Delhi.*



Meaning of LLP

A Limited Liability Partnership, popularly known as LLP combines the advantages of both the Company and Partnership into a single form of organization. It is hybrid structure posing the features of both Company and Partnership. It is alternative form of business, for those who are not looking to form either company or partnership. LLP as the name stays is basically a partnership between various persons/entities who have agreed to carry on some lawful business with profitable motive with liabilities of each person/entity being limited to the amount agreed to be contributed by them

LLP has a separate identity in the eyes of law, which means both LLP and its Partners are separate from each other, the business is carried on in the name of LLP, the properties and liabilities are owned by the LLP and not its Partners. In LLP one partner is not responsible or liable for another partner's misconduct or negligence; this is an important difference from that of a unlimited partnership. In LLP, unlike corporate shareholders, the partners have the right to manage the business directly.



Limited Liability Partnership is managed as per the LLP Agreement, however in the absence of such agreement the LLP would be governed by the framework provided in Schedule 1 of Limited Liability Partnership Act, 2008 which describes the matters relating to mutual rights and duties of partners of the LLP and of the limited liability partnership and its partners.

Under LLP, no partner would be liable on account of the independent or un-authorized actions of other partners, thus allowing individual partners to be shielded from joint liability created by another partner's wrongful business decisions or misconduct.

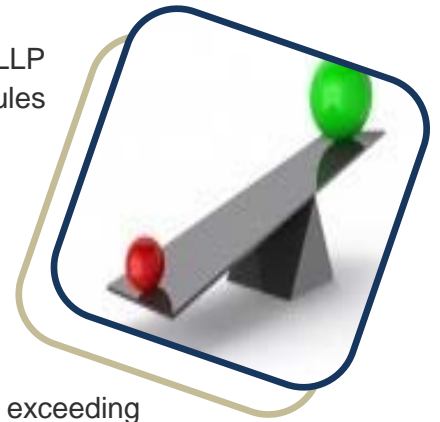
Features

- ✓ LLP is Body Corporate, which means that LLP has distinct entity from that of its Partners.
- ✓ Minimum 2 partners are required to form LLP; there is no restriction on maximum number of partners.
- ✓ No minimum capital is prescribed for forming a LLP; it can be formed with even Rs 100.
- ✓ Liability of Partners is limited to the extent of capital contributed by partners
- ✓ Partners are agents of LLP only. Partners are not liable for act of other partners.
- ✓ LLP can be formed only for carrying activities with profitable intent.
- ✓ LLP is governed by LLP Agreement , entered into between the Partners.
- ✓ LLP are required to suffix LLP or Limited Liability Partnership as part of their name.
- ✓ LLP is not dissolved each time any partners is admitted or ceased.

Benefits & Drawbacks

✓ Benefits

- Renowned and accepted form of business worldwide.
- Low cost of Formation, with minimum and maximum statutory cost of incorporation limited to Rs 1000 and Rs 5500.
- LLP though created under law but it is governed by LLP Agreement, which provides it the flexibility to define own rules and regulations.
- No requirement of any minimum capital contribution.
- No restrictions as to maximum number of partners.
- Liability of Partners is limited.
- Partners are not liable for acts of partners.
- Less Compliance level.
- LLP also offers various tax benefits.
- Audit of Accounts is required only in case of contribution exceeding Rs. 25 lakh or turnover exceeding Rs. 40 lakh.



✓ Drawbacks

- LLP being recently introduced suffers from lack of awareness & recognition.
- Requirement of amending LLP Agreement, on happening of various events, creates frustration.
- Heavy penalties are prescribed for non compliance.
- Partners salary beyond specified limits is not allowed as deduction , for tax purposes.

LLP vs Partnership vs Company

Some of the important grounds of distinction between LLP and other existing forms of business have been outlined below:

Category	Partnership	Company	LLP
Prevailing Law	Partnership is regulated by 'The Indian Partnership Act, 1932'	Company is regulated by 'Companies Act, 1956'	Limited Liability Partnership is regulated by 'The Limited Liability Partnership Act, 2008'
Registration	Registration is optional	Registration with Registrar of Companies required.	Registration with Registrar of LLP required.
Number of Members	Minimum 2 and Maximum 20	Minimum 2 and maximum 50 in Private Company	Minimum 2 partners and there is no limitation of maximum number of partners.
Cost of Formation	The cost of Formation is negligible	Minimum Statutory fee for incorporation of Private Company is Rs.6,000/-	Minimum statutory fees for incorporation of LLP is Rs 1000/-
Distinct entity	Not a separate legal entity	Is a separate legal entity under the Companies Act, 1956.	Is a separate legal entity under the Limited Liability Partnership Act, 2008.
Perpetual Succession	It does not have perpetual succession as this depends upon the will of partners	It has perpetual succession and members may come and go.	It has perpetual succession and partners may come and go
Charter Document	Partnership Deed is a charter of the firm which denotes its scope of operation and rights and duties of the partners	Memorandum and Article of Association is the charter of the company which denotes its scope of operation.	LLP Agreement is a charter of the LLP which denotes its scope of operation and rights and duties of the partners vis-à-vis LLP.
Capacity to sue	Only registered	A company is a legal	A LLP is a legal entity

and be sued	partnership can sue third party	entity which can sue and be sued	can sue and be sued
Rights / Duties / obligation of the Partners / Managing Partners / Directors	Rights / Duties / obligation of the partners are governed by Partnership Deed.	Rights / Duties / obligation of the directors are governed by Articles of Association.	Rights / Duties / obligation of the partners are governed by LLP Agreement.
Liability of Partners/Members	Partner's liability is unlimited and can extend to their personal assets.	Liability of member is always limited.	Liability of partner is always limited except in case of intentional fraud or wrongful act of omission or commission by that partner.
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 education cess, surcharge as applicable.	Income of Partnership is taxed at a flat rate of 30% plus education cess as applicable
Principal/Agent Relationship	Partner is an agent of the firm and other partners.	Director is a agent of the company and not of the members	Partner is an agent of LLP and not of the other partners.
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.
Transferability of Interest	A partner can transfer his interest subject to the Partnership Agreement	A member can freely transfer his interest	A partner can transfer his interest subject to the LLP Agreement
Admission as partner / member	A person can be admitted as a partner as per the partnership Agreement	A person can become member by buying shares of a company.	A person can be admitted as a partner as per the LLP Agreement
Cessation as partner / member	A person can cease to be a partner as per the agreement	A member can cease to be a member by selling his shares.	A person can cease to be a partner as per the LLP Agreement or in absence of the same by giving 30 days prior notice to the LLP.

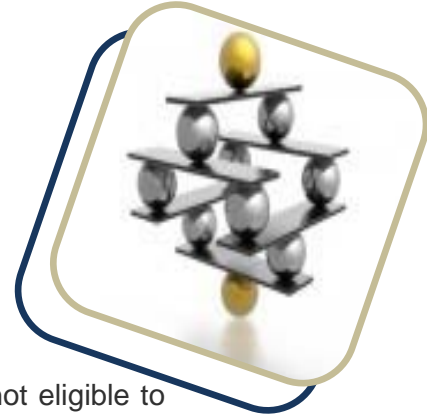
Statutory Meetings/Records	There is no requirement of holding any meeting /maintaining of any statutory records	There are various requirements of holding meetings /maintaining statutory records	There is no provision in regard to holding of any meeting/maintaining of records except books of accounts.
Annual Compliance	No return is required to be filed with Registrar of Firms	Annual Financial Statement and Annual Return are required to be filed with the Registrar of Companies every year.	Annual Statement of accounts and Solvency & Annual Return are required to be filed with Registrar of LLP every year.
Audit of accounts	Partnership firms are not required to get their accounts audited	Companies are required to get their accounts audited under the Companies Act, 1956,	All LLP except for those having turnover/contribution less than Rs. 40 Lacs or Rs. 25 Lacs any financial year are required to get their accounts audited annually
Foreign Investment	Foreign Nationals cannot form Partnership Firm in India	Foreign Nationals can be a member in a Company.	Foreign Nationals can be a Partner in a LLP but currently foreign investment policy is under preparatory stage.

Partner

There should be atleast 2 persons (natural or artificial) to form a LLP. In case any Body Corporate is a partner, than he will be required to nominate any person (natural) as its nominee for the purpose of the LLP.

Following can become a partner in the LLP

- a. Company incorporated in and outside India
- b. LLP incorporated in & outside India
- c. Individuals resident in & outside India



Following cannot become Partners

- a. Minors cannot become partners in LLP as they are not eligible to enter into contract.
- b. Partnership/HUF/Trust, as these are not legal entities.
- c. Foreign Individual and entities, since foreign investment is currently not allowed in LLP.

Designated Partners

Every limited liability partnership shall have at least two designated partners who should be individuals and at least one of them shall be a resident in India. Designated Partners are the partners who have been appointed under the LLP Agreement , as the Designated Partners and who are responsible for the compliance of provisions prescribed under the LLP Act and terms & conditions of the LLP Agreement.

In terms of rights and liabilities, there is no difference between designated Partners and other Partners, both stands on same footing.

Provided that in case of a limited liability partnership in which all the partners are bodies corporate or in which one or more partners are individuals and bodies corporate, at least two individuals who are partners of such limited liability partnership or nominees of such bodies corporate shall act as designated partners.

Explanation.—for the purposes of this section, the term “resident in India” means a person who has stayed in India for a period of not less than one hundred and eighty-two days during the immediately preceding one year.

Contribution

In case of LLP, every partner is required to contribute towards the LLP in some manner. The said contribution can be tangible, movable or immovable or intangible property or other benefit to the limited liability partnership, including money, promissory notes, and other agreements to contribute cash or property, and contracts for services performed or to be performed. Actual contribution made is the capital of the LLP.

In case the contribution is in intangible form, the value of the same shall be certified by a practicing Chartered Accountant or by a practicing Cost Accountant or by approved valuer from the panel maintained by the Central Government. The monetary value of contribution of each partner shall be accounted for and disclosed in the accounts of the limited liability partnership in the manner as may be prescribed.

The LLP Agreement must specify the contribution intended to be paid by all the members and the form in which it will be paid.

Designated Partners Identification Number (DPIN)

Every Designated Partner is required to obtain a DPIN from the Central Government.

DPIN is an eight digit numeric number allotted by the Central Government in order to identify a particular partner and can be obtained by making an online application in Form 7 to Central Government along with necessary identity and Address proof of the person applying with prescribed fees.

It is not necessary to apply Designated Partner Identification Number every time you are appointed partner in a LLP, once this number is allotted it would be used in all the LLP's in which you will be appointed as Designated Partner.

Digital Signature Certificate

For obtaining DPIN and filing various eforms for the incorporation of the LLP, every Designated Partner is required to obtain a Digital Signature.

The Digital Signature Certificate once obtained will be useful in filing various forms which are required to be filed during the course of existence of the LLP with the Registrar of LLP.

LLP Name

Selection of the name for the proposed LLP to be incorporated is one of the important process of the entire incorporation process, ideally the name of the LLP should be such which represents the business or activity intended to be carried on by the LLP. Before selecting the name of the LLP, it is necessary to evaluate the proposed name under the following given criteria:

- **LLP with Similar Name:** The proposed name of the LLP should not be similar to the name of the Company or LLP, which is already registered in India.

For example:

Name of Company already registered: Oasis Water Treatments Pvt Ltd

Name of Proposed LLP: Oasis Water Treatment LLP

Whether Proposed Name would be available: No

- **Prohibited Word:** The Ministry of Corporate Affairs of India has prescribed certain words, which should not form part of the name of LLP intended to be incorporated in India, such words are prohibited under The Emblems and Names (Prevention of improper use) Act, 1950.
- **Words Based on Approval:** Various government regulatory authorities operating in India like Securities & Exchange Board of India, Reserve Bank of India, has prescribed certain words, which if forms part of the name of the proposed LLP to be incorporated, requires there first hand approval.
- **Names reserved for Foreign LLP/Companies:** In case Foreign LLP/Companies have reserved their name under rule 18 of the LLP Rules 2009, than that name will not be applicable for forming of LLP to persons other than that Foreign LLP/Company

It is advisable that the LLP name should start with an noun and shall contain the activity proposed to be carried on by the LLP

LLP Agreement

For the purpose of forming a LLP, there should be agreement between the partners interested in forming the LLP to be known as LLP Agreement. The said Agreement forms the basis of the formation of LLP and lays down its founding structure. The LLP agreement is an agreement between the Partners and between the LLP & its partners.

The basic contents of Agreement are:

- Name of LLP
- Name of Partners & Designated Partners
- Form of contribution
- Profit Sharing ratio
- Rights & Duties of Partners

In case no agreement is entered into, the rights & duties as prescribed under Schedule I to the LLP Act shall be applicable. It is possible to amend the LLP Agreement but every change made in the said agreement must be intimated to the Registrar of Companies.

Registered Office

The Registered office of the LLP is the place where all correspondence related with the LLP would take place, though the LLP can also prescribe any other for the same. A registered office is required for maintaining the statutory records and books of Account of LLP.

At the time of incorporation, it is necessary to submit proof of ownership or right to use the office as its registered office with the Registrar of LLP. Residence can also be used as registered office for LLP and it can also be changed.

LLP Incorporation Process

Step 1: Deciding the Partners and the Designated Partners

Step 2: Obtaining Digital Signatures and DPIN No.

Step 3: Application for approval of name of LLP

Step 4: Drafting of LLP Agreement

Step 5: Application for incorporation of LLP

Step 6: Certificate of Incorporation


Step 1: Deciding the Partners and the Designated Partners

A LLP can be incorporated with a minimum of atleast two partners who can be Individuals or Body Corporate through their nominees. Further for incorporating an LLP, of the total number no. of partners, atleast two shall be Designated Partners, of which atleast one must be an Indian Resident.

Parameters for deciding the Partners and Designated Partners:

1. Atleast Two Partners; Individuals or Body Corporate through individual nominees.
2. Minimum of Two Individuals as Designated Partners, of total no. of Partners.
3. Atleast One Designated Partner to be Resident Indian.

A person 'Resident in India' means a person who has stayed in India for a period of not less than one hundred and eighty two days during the immediately preceding one year.



You have a right to
surround yourself with
perfect partner having
a vision of success

Step 2: Obtaining Digital Signatures and DPIN No.

Designated Partner Identification Number (DPIN): Section 7 (6) of LLP Act 2008, provides that every Designated Partner to obtain a DPIN from the Central Government.

DPIN is an eight digit numeric number allotted by the Central Government in order to identify a particular partner and can be obtained by making an online application in eForm 7 to Central

Government and submitting the physical application along with necessary identity and Address proof of the person applying with prescribed fees.

Digital Signature Certificate: As all the documents and forms required for incorporating an LLP in India to be filed electronically and under the signatures of Designated Partners, and also for e filing of the DPIN every Designated Partner to obtain the digital signature certificates from government recognized DSA's. The signatures shall also be required for signing and filing of all relevant forms and documents to be filed, annually or event based after incorporation of the LLP, asking for approvals or as intimation.

Likewise the manual signatures, digital signature certificates are individual specific and no designated partner needs to obtain more than one.

Step 3: Application for approval of name

The next step is to decide the name for the proposed LLP to be incorporated, anyone intending to incorporate an LLP has to evaluate his proposed name under the prescribed parameters and make an application in Form 1 of Rule 18(5) of the Limited Liability Partnership Act 2008, for reservation of the desired name. The name application and the DPIN application can be made simultaneously.

The name of the limited liability partnership shall not be similar or identical with Company or LLP already registered in India and it should not contain words prohibited under the 'Emblems and Names (Prevention of improper use) Act, 1950' or which are also not 'Undesirable' in the opinion of Central Government or which satisfies the conditions prescribed under rule 18(2). For more information check Name Availability Guidelines.

In case any Body Corporate is partner, copy of Board resolution authorizing the incorporation of LLP shall be attached along with the name application form.



Step 4: Drafting of LLP Agreement

The next pertinent step is drafting of Limited Liability Partnership Agreement governing the mutual rights and duties among the partners and among the LLP and its partners.

The basic contents of Agreement are:

- Name of LLP
- Name of Partners & Designated Partners
- Form of contribution
- Profit Sharing ratio
- Rights & Duties of Partners



- Proposed Business
- Rules for governing the LLP

In case no agreement is entered into, the rights & duties as prescribed under Schedule I to the LLP Act shall be applicable

It is not necessary to have the LLP Agreement signed at the time of incorporation, as the details of the same needs to field in eform 3 within 30 days of incorporation but in order to avoid any dispute between the partners as to the terms & conditions of the agreement after the formation of LLP, it is always beneficial to have the LLP Agreement drafted and executed before the incorporation of the LLP.

In case the Agreement is executed outside India, than it must be notarized and consularized.

Step 5: Application for Incorporation of LLP

Next is the filing of Incorporation application electronically through the medium of e-form 2 prescribed with the Registrar of LLP for incorporation of the LLP on payment of prescribed fees based on the total monetary value of contribution of partners in the proposed LLP.

eForm 2: Incorporation Document

This is an informative document setting down the details of LLP, its Partners including designated partners along with their amount of contribution and consent for forming a Limited Liability Partnership to carry on a lawful business with profit motive along with declaration stating that all the requirements of Limited Liability Partnership Act, 2008 regarding incorporation of LLP in India have been complied with.

Step 6: Certificate of Incorporation

After the Registrar is satisfied that all the formalities with respect to the incorporation has been complied, he will issue a Certificate of Incorporation as to formation of the LLP within maximum of 14 days from date of filing of documents. The Certificate of Incorporation issued shall be the conclusive evidence of formation of the LLP.



Rights and Duties of Partners

Partners are persons (whether natural or artificial) who have subscribed their name to the incorporation document and further any new person can be admitted to the LLP as per the provisions of LLP Agreement. The LLP Act 2008 defines the term partner under Section 2(q) as “Partner”, in relation to a limited liability partnership, as any person who becomes a partner in the Limited Liability Partnership in accordance with the Limited Liability Partnership Agreement.

Role of Partner

Section 26 defines the role of partner and states that, every partner of a Limited Liability Partnership is, for the purpose of the business of the Limited Liability Partnership, the agent of the Limited Liability Partnership, but not of other partners. It means that the relation of principal and agent is only between the LLP & its partners and not between the partners per se.



Rights of Partners

Partners regarding the rights are alike the Partners in the traditional Partnership Firm. Partners have the right to participate in the management of the LLP though they are not entitled to any remuneration for participating in the management of LLP unless otherwise provided in the LLP Agreement. The partners would be entitled to share equal profits in the LLP or as may be provided by LLP agreement.

The rights of a partner to a share of the profits and losses of the limited liability partnership and to receive distributions in accordance with the Limited Liability Partnership agreement are transferable either wholly or in part provided that the :

- The transfer of any right by any partner does not by itself cause the disassociation of the partner or a dissolution and winding up of the limited liability partnership.
- Entitle the transferee or assignee to participate in the management or conduct of the activities of the limited liability partnership, or access information concerning the transactions of the limited liability partnership.

Duties of Partners

Partners under ethical conduct are required to comply with all the provisions of LLP Act and LLP agreement and not to indulge in any fraudulent transaction with the creditors or outsiders. Further Partners for being transparent with the LLP are obligatory to provide some information to LLP like in case if there is any change in name and address of Partner he shall inform the same to LLP with 15 days of such change. In case of admission of partner the incoming partner shall give his prior consent to act as such partner. If any partner desires to resign from the partnership he shall inform the same by giving a 30 day notice to other partners.

Liability of Partners

- The Liability of Partners in LLP unlike partnership Firm is limited to the extent of their contribution.
- Any partner of the LLP would not be liable for the wrongful act or omission of any other partner of the limited liability partnership.
- Partners are not personally liable for any obligation of LLP arising out of a contract or otherwise solely by reason of being a partner of the limited liability partnership.
- Partners shall be solely liable for all acts done without the authority of the LLP
- For protecting the public interest, section 30 provides for unlimited liability of the partners in case any fraudulent transaction has been carried with the intention to defraud with the creditors or any other person dealing with Limited Liability Partnership.



Management of LLP

Limited Liability Partnerships are governed by the terms and conditions of the LLP Agreement unless the agreement specifically provides that particular partner shall be responsible for managing the affairs of the LLP, all the partners shall be deemed to have the power to manage the business. Generally partners, who are actively involved in the day to day management activities, are called as Managing Partners. Such Managing Partners have general powers to manage the business of the LLP and unless otherwise provided in the LLP Agreement, all decision relating to the business are taken by them. In case nothing is provided in the LLP Agreement, all business decision is taken by all partners collectively.

There is no concept of meeting in LLP unless otherwise provided in the LLP Agreement and approval for all decision is taken by written or oral consent. Partners may at their discretion meet as and when they want to. In case all partners are not actively engaged in the business of the LLP, all major business decision are taken with their consent, unless otherwise provided in the LLP Agreement.



LLP Act specifically provides that Designated Partners shall be liable for the compliance of the terms and conditions of the LLP Agreement and LLP Act but Designated Partners cannot to be said to be managing partners unless they actively take part in the management of the LLP.

Things to be kept in mind:

- Clearly define the role and duties of each partner in the Agreement.
- Maintain written document of all key decisions related to the business.
- Hold meetings of partners from time to time.
- Keep transparency in maintaining books of accounts & other accounting matters
- For Banking transactions , define the authorities in terms of monetary limits

Importance of LLP Agreement

LLP 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.

It is not necessary to enter into an LLP Agreement as per the LLP Act 2008. In absence of LLP Agreement, the mutual rights of Partners and in relation to LLP will be determined as per Schedule I of the LLP Act 2008.

Features of Standard clauses of Schedule I

- All partners entitled to share equally in the Capital and Profits/losses.
- Indemnity Clause
- Every Partner shall take part in management
- No partner shall be entitled to remuneration.
- No partner introduced without consent of all partners.
- All decisions with majority of partners consent
- Minutes of decisions to be recorded within 30 days
- Rendering of true accounts & information by all partners
- All Disputes will be referred to Arbitration Act



Generally, every business and owners have their own way to manage to run the Business and therefore the standard clauses given in first schedule to LLP Act will not be practically acceptable in majority of the cases. Therefore to be on the secure side, it is always advisable to have a legally drafted agreement from qualified professionals.

Features can be inserted in agreement are:

- Form & Manner of Contribution between parties
- Profit & loss sharing ratio
- Business to be carried on
- Rights & Liabilities of Partner
- Admission & cessation of partners.
- Duties of partners
- Partners accountable/authorized for banking process.
- Specific decisions like Investment, taking/giving loan, disposition of property of LLP etc to be made by majority partners.
- Requirement of disclosure of substantial interest of Partner in transactions to be entered by the LLP.
- Manner of dispute resolution

In case of joint ventures & collaborations, it is always recommended to have clearly drafted LLP Agreement, which defines the rights & duties of all the parties to the Agreement, in order to avoid any dispute in future and smooth running of the business.

LLP Agreement is also important from the point of view of taxation. The remuneration paid to the partners and interest on capital provided by the Partners will be disallowed as deduction while calculating the net profits of the LLP for the payment of income tax under the Income Tax Act 1961, if their payment is not authorized by the LLP Agreement

The LLP Agreement if executed, its details are required to be filed with the Registrar of LLP. However if LLP agreement is executed before registration of LLP, the partners will have to ratify this agreement after incorporation of LLP and file its details with Registrar of LLP. LLP Agreement shall also be liable for stamp duty as per the Stamp Duty laws prescribed the related State Government, where the said agreement will be executed.

The LLP Agreement once entered into can be amended as per the terms and conditions mentioned in the Agreement and any change therein, must be intimated to the Registrar of Companies within 30 days of the change

TAX on LLP

Tax rate:

- 30% flat tax rate + 3% education cess
- No Minimum Alternate Tax & Dividend Distribution Tax

Eligibility (section 184 of Income Tax Act):

In order for Limited Liability Partnership to be assessed as firm as Income Tax Act, it has to satisfy the following criteria

- The LLP is evidenced by an instrument i.e. there is a written LLP Agreement.
- The individual shares of the partners are very clearly specified in the deed.
- A certified copy of LLP Agreement must accompany the return of income of the LLP of the previous year in which the partnership was formed.
- If during a previous year, a change takes place in the constitution of the LLP or in the profit sharing ratio of the partners, a certified copy of the revised LLP Agreement shall be submitted along with the return of income of the previous years in question.
- There should not be any failure on the part of the LLP while attending to notices given by the Income Tax Officer for completion of the assessment of the LLP.



LLP can claim the following deductions:-

- Interest paid to partners, provided such interest is authorized by the LLP Agreement (Section 40(b)).
- Any salary, bonus, commission, or remuneration (by whatever name called) to a partner will be allowed as a deduction if it is paid to a working partner who is an individual.
- The remuneration paid to such working partner must be authorised by the LLP Agreement and the amount of remuneration must not exceed the given limits. ((Section 40(b)).

When section 184 is not complied with, the consequence is that no deduction towards interest and remuneration is allowed. This is the mandate of the section 185.

Steps for Computation of taxable income of a LLP:-

- Find out the firm's income under the different heads of income, ignoring the prescribed exemptions. The heads of income are:-
 - Income from House Property
 - Profits and Gains of Business or Profession
 - Capital Gains
 - Income from other sources including interest on securities, winnings from lotteries, races, puzzles, etc. ('Salary' income head is not included)
- Make adjustments on account of brought forward losses/ disallowances of interests, salary, etc paid by firm to its partners. The total income so obtained is the "gross total income".
- From the "gross total income", make the prescribed deductions and the balancing amount is the "net income" of the firm.

Assessment of Partners of LLP

Exemption of partner's share income from LLP:

Section 10(2A) exempts the share income from the LLP in the hands of the partner. The share of a partner in the total income of a LLP separately assessed as such shall, be an amount which bears to the total income of the LLP the same proportion as the amount of his share in the profits of the LLP in accordance with the LLP Agreement bears to such profits.

The share of the partner in the income of the LLP is not included in computing his total income i.e. his share in the total income of the LLP shall be exempt from tax.

If conditions of Section 184 and 40(b) of the Act are satisfied, then any interest, salary, bonus, commission or remuneration paid/payable by the LLP to the partners is taxable in the hands of partners (to the extent these are allowed as deduction in the hands of the LLP). Please keep in mind that remuneration paid to partner is treated as income from business and profession under the Income Tax Act and not as salary

Frequently Asked Questions (FAQ)

1. *What is a limited Liability Partnership?*

Limited Liability Partnership is an alternative form of business, which combines the features of a Company and Partnership. It is partnership where the liability of its partners is limited.

2. *How many persons are required to form LLP?*

Minimum 2 persons (natural or artificial) are required to form a LLP

3. *Whether company can become partner in LLP?*

Any entity which is body Corporate can become a partner in LLP and therefore a company can.

4. *Who can become partner in the LLP?*

Following can become a partner in the LLP

- a. Company incorporated in and outside India
- b. LLP incorporated in & outside India
- c. Individuals resident in & outside India

Following cannot become Partners

- a. Minors cannot become partners in LLP as they are not eligible to enter into contract.
- b. Partnership/HUF/Trust, as these are not legal entities.
- c. Foreign Individual and entities, since foreign investment is currently not allowed in LLP.



5. *Which is the administering authority for LLP? How can I find its address for my city?*

Registrar of LLP is the administering authority for LLP and it has only office in New Delhi.

6. *What are benefits of forming LLP?*

- a. Renowned and accepted form of business worldwide.
- b. Low cost of Formation, with minimum and maximum statutory cost of incorporation limited to Rs 1000 and Rs 5500.
- c. LLP though created under law but it is governed by LLP Agreement, which provides it the flexibility to define own rules and regulations.
- d. No requirement of any minimum capital contribution.
- e. No restrictions as to maximum number of partners.
- f. Liability of Partners is limited.
- g. Partners are not liable for acts of partners.
- h. Less Compliance level.

- i. LLP also offers various tax benefits.
- j. Audit of Accounts is required only in case of contribution exceeding Rs. 25 lakh or turnover exceeding Rs. 40 lakh.

7. What is the statutory cost of forming a LLP with capital of Rs 1 lakhs & 2 partners?

The Statutory cost of formation of LLP with capital of Rs 1 lakhs & 2 partners is Rs 1000.

8. What is LLP Agreement? Is it necessary to have LLP Agreement?

LLP Agreement is the charter document of LLP. The agreement defines the mutual rights and duties of partners *inter se* and those of the LLP and its partners. The said agreement

As per provisions of the LLP Act, in the absence of any LLP agreement, the mutual rights and liabilities shall be as provided for under **Schedule I** to the Act. Therefore, in case any LLP proposes to exclude provisions/requirements of Schedule I to the Act, it would have to enter into an LLP Agreement, specifically excluding applicability of any or all paragraphs of Schedule I.

LLPonline.in has team of experienced legal professionals for drafting LLP Agreement as per the needs of the partners.

9. Can LLP Agreement be amended later?

During the course of existence of the LLP, it can be amended at anytime for number of times.

10. Whether a partnership or HUF can become partner in LLP?

No, Partnership/HUF cannot become partner in the LLP

11. Can there be different profit share ratios in LLP?

In LLP, the ratio of sharing profit among the partners depends upon their will and discretion and therefore there can be different ratios for sharing profit.

12. Whether it is necessary for all the partners to contribute capital?

Though it is not necessary for all the partners to contribute capital but the regulator is not registering any LLP, where all the partners are not contributing.

13. Whether we required filing LLP Agreement at the time of its incorporation?

No, LLP Agreement is mandate to be filed with the Registrar of LLP as an attachment in eForm 3 along with this some important information forming part of the agreement is required to be filed in form 3 with the Registrar.

14. Is there any guideline for the name of LLP?

Ministry of Corporate Affairs has prescribed guidelines in respect of name approval for LL guidelines are available on www.LLPonline.in



A LLP with name similar or identical to the name of existing company cannot be incorporated. Therefore it is necessary that due care should be followed while applying for name approval of the LLP

15. What is the eligibility of becoming partner in LLP?

Any individual or body corporate may be a partner in a LLP. However an individual **shall not be capable** of becoming a partner of a LLP, if—

- (a) he has been found to be of unsound mind by a Court of competent jurisdiction and the finding is in force;
- (b) he is an undischarged insolvent; or
- (c) he has applied to be adjudicated as an insolvent and his application is pending.

16. Is there any residency requirement for becoming partner in LLP?

No, there is no residency requirement but atleast one designated partner shall be an Indian resident.

17. Can Foreign national/entities make investment in LLP?

The LLP Act permits foreign national /entities to become a partner in the LLP but since the Government of India has not announced the Foreign Investment policy in LLP, therefore currently they cannot become partners

18. What is DPIN?

Every Designated Partner is required to obtain a DPIN from the Registrar of LLP.

DPIN is an eight digit numeric number allotted by the Central Government in order to identify a particular partner and can be obtained by making an online application in Form 7 to Central Government along with necessary identity and Address proof of the person applying with prescribed fees.

19. Whether every partner is required to have Digital Signatures in LLP?

Only Designated Partners are required to have Digital Signatures

20. How LLP is taxed?

LLP is treated as Partnership under Income Tax Act and is therefore taxed at flat rate of 30% plus education cess.

21. Is there any requirement of registered office for LLP? Can I use my residence as its registered office?

Every LLP shall have its registered office, details of which are required to be filed with the Registrar of LLP. Any partner's residence can be used for purpose of registered office of LLP.

22. Can I change the registered office of LLP?

LLP can at any point of time, change its registered office, subject to terms and conditions mentioned in the LLP Agreement.

23. Whether I would be liable for acts of other partners in the LLP?

No, a partner will not be liable for the acts of other Partners in the LLP

24. Can LLP take new partners after its incorporation?

There is no limit on maximum number of partners in LLP and therefore, it can admit additional partner after incorporation

25. Can existing partners leave LLP after its incorporation?

Partner can cease to be partner as per the terms and conditions prescribed under the LLP Agreement.

26. What are the mandatory compliances in LLP?

Every LLP has to undertake the following compliances every year:

Filing of Annual Return	Within 60 days of closure of financial year
Filing of Statement of Accounts & Solvency	Within 30 days after expiry of 6 months from the financial year.

27. Whether there is any requirement of maintaining of books and accounts?

Every LLP shall be under obligation to maintain annual accounts reflecting true and fair view of its state of affairs

28. Whether it is required to get the accounts of LLP, audited?

No, Only the Limited Liability Partnership whose contribution exceed Rs. 25 Lakh or the Limited Liability Partnership whose turnover exceed Rs. 40 Lakh are required to annually get their accounts audited by any Chartered Accountant in practice.

29. Whether LLP can carry on activities related to financing, accepting deposits & other NBFC activities?

Currently LLP is not allowed to carry on financing, accepting deposits & other NBFC activities. Reserve Bank of India is under the process of drafting the necessary regulations in this regards

30. Whether partners can contribute capital in form of immovable property or intangible assets?

A contribution of a partner may consist of tangible, movable or immovable or intangible property or other benefit to the limited liability partnership, including money, promissory notes, other agreements to contribute cash or property, and contracts for services performed or to be performed

31. What is the extent of liability of Partners in LLP?

The liability of partner is limited to the extent of his contribution mentioned in the LLP Agreement and only in case of any fraud or wrongful act or commission done by him, his liability will be unlimited.

32. Whether my choice of name for LLP, can be rejected?

Yes, in case your name is not as per the name guidelines prescribed by the Ministry of Corporate Affairs, than the Registrar of Companies can reject it.

33. Which type of activities can be carried by a LLP?

All lawful activities other than which are specifically prohibited can be carried under LLP for the purpose of making profit.

34. Whether existing companies or partnership can convert themselves into LLP?

The LLP Act 2008 allows existing private companies and unlisted public companies companies and partnership to convert them into LLP. It provides certain conditions, which should be compiled at the time of conversion.

35. Is there any minimum capital required for incorporating a LLP?

No, there is no requirement of any minimum capital in the LLP, you can form LLP with rs 100 also

36. How can LLP be wound up?

A LLP can be wound up in the following ways:

- a) By declaring the LLP as defunct
- b) By voluntary consent of all the Partners
- c) By the order of National Company Law Tribunal

OUR OFFRINGS

Our boutiques of services to meet your needs are underlined below:

- LLP Incorporation Services
- LLP Conversion Services
- Complete Business Setup Services
- Audit Services
- Book Keeping
- Legal Opinions
- Trademark Registrations
- Tax Number Registrations
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CONTACT US

Office

Corporate Professionals (India) Pvt. Ltd

D-28 South Extension Part 1

New Delhi 110049

Tel: +91 11 40622200

Fax: +91 11 40622001

Email: info@indiacp.com

<http://www.corporateprofessionals.com>

<http://www.llponline.in>

Or you can also contact the following persons

Ankit Singhi

Manager

Tel: +91 11 40622208

M: +91 11 9910888952

Email: ankit@indiacp.com

Shipra Wadhwa

Associate

Tel: +91 11 40622248

Email: shipra@indiacp.com

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