Limited Liability Partnership

Introduction

An LLP is a business structure that came into being by the passing of the LLP Act, 2008 and the notification of the LLP Rules, 2009. Section 3 of the LLP act declares an LLP as a body corporate formed and incorporated under the Act and is a legal entity separate from its partners.

LLPs are a flexible legal and tax entity that allows partners to benefit from economies of scale by working together while also reducing their liability for the actions of other partners.

- Limited liability partnerships (LLPs) allow for a partnership structure where each partner's liabilities is limited to the amount they put into the business.
- Having business partners means spreading the risk, leveraging individual skills and expertise, and establishing a division of labor.
- Limited liability means that if the partnership fails, creditors cannot go after a partner's personal assets or income.
- LLPs are common in professional business like law firms, accounting firms, and wealth managers.

Most LLPs are created and managed by a group of professionals who have a lot of experience and clients between them. By pooling resources, the partners lower the costs of doing business while increasing the LLP’s capacity for growth. They can share office space, employees, and so on. Most important, reducing costs allows the partners to realize more profits from their activities than they could individually.

Features of an LLP

- An LLP is a body corporate and legal entity separate from its partners. It has perpetual succession.
- Being the separate legislation (i.e. LLP Act, 2008), the provisions of Indian Partnership Act, 1932 are not applicable to an LLP and it is regulated by the contractual agreement between the partners.

- Every Limited Liability Partnership shall use the words “Limited Liability Partnership” or its acronym “LLP” as the last words of its name.
- It contains elements of both ‘a corporate structure’ as well as ‘a partnership firm structure’.
- Every LLP shall have at least two designated partners being individuals, at least one of them being resident in India and all the partners shall be the agent of the Limited Liability Partnership but not of other partners.
- LLP agreement is not mandatory but in the absence of LLP agreement, mutual rights and liabilities of partners shall be determined as provided under Schedule I to the LLP Act.

Difference Between LLP & Partnership

Basis of Comparison	**LLP**	**Partnership**
Definition	LLP is a business form that offers the combined benefits of a partnership and a company	A partnership is a form of business where two or more individuals agree to carry business and share profit loss mutually
Governed by	Limited Liability Partnership Act, 2008	Indian Partnership Act, 1932
Liability of Partners	Limited	Unlimited
Registration	Mandatory	Optional
Legal Status	Legal Entity	Partners are collectively known as a firm, but it has no separate legal entity
Agreement Document	LLP Agreement	Partnership Deed
Naming of Firm	Must suffix LLP after the name of the firm	Can be any name
Maximum Number of Partners	No limit	100

Advantages of forming an LLP

- LLP form is a form of business model which is organized and operates on the basis of an agreement.
- Liability of partners is limited to their agreed contribution in the LLP and no partner is liable on account of the independent or un-authorized actions of other partners, thus individual partners are protected from joint liability created by another partner's wrongful business decisions or misconduct.
- LLP has more flexibility and lesser compliance requirements as compared to a company.
- Simple registration procedure, no requirement of minimum capital, no restrictions on maximum limit of partners.
- It is easy to become a partner or leave the LLP or otherwise.
- It is easier to transfer the ownership in accordance with the terms of the LLP Agreement.
- As a juristic legal person, an LLP can sue in its name and be sued by others. The partners are not liable to be sued for dues against the LLP.
- No restriction on limit of the remuneration to be paid to the partners like companies, but the remuneration must be authorized by the LLP agreement and it cannot exceed the limit prescribed under the agreement.
- The Act also provides for conversion of existing partnership firm, private limited Company and unlisted public Company into an LLP by registering the same with the Registrar of Companies (ROC).
- No exposure to personal assets of the partners except in case of fraud.

Procedure to Form of an LLP

LLP registration procedure is the easiest and transparent process as it has a blend of the benefits of a company and partnership firm namely, limited liability feature of a company and the flexibility of a Partnership firm. Procedure of LLP registration is not lengthy as you can file your incorporation form online. Online LLP registration procedure will save you a lot of time and energy. LLP registration process includes following steps:

1. Get a digital signature (DSC)
2. Apply for Director Identification Number (DIN)
3. Get the name of the company approved
4. Incorporation of LLP
5. File 'Limited Liability Partnership Agreement'

Form name	**Form purpose**
RUN – LLP	Form for reserving a name for the LLP
FiLLiP	Form for incorporation of LLP
Form 5	Notice for change of name
Form 17	Application and statement for the conversion of a firm into LLP
Form 18	Application and Statement for conversion of a private company/unlisted public company into LLP

Tax Rates (For AY 2020-21) for Partnership Firms and LLP's

Long – term capital gain	20	%
Short – term capital gain u/s 111A	15	%
Other Income	30	%

- Surcharge – 12 % (where taxable income including capital gain exceeds Rs. 1 crore). It is subject to Marginal relief.
- Health and Education Cess – 4 % (on the amount of income tax and surcharge)
- Alternative Minimum Tax – Tax payable by firm can't be less than 9% (Plus Cess) of adjusted total income as per Sec. 115 JC.

LLP Audit

As per LLP Act, 2008 provides every LLP having turnover exceeds Rs. 40 Lakhs or whose Capital contribution exceeds Rs. 25 Lakhs are required to annually get their accounts audited by a chartered accountant. As per Income Tax Act, 1961 provides every LLP having turnover exceeds Rs. 100 Lakhs are required to annually get their accounts audited by a chartered accountant

Disadvantages of forming an LLP

- Any act of the partner without the consent of other partners, can bind the LLP.
- Under some cases, liability may extend to personal assets of the partners.
- An LLP are not allowed to raise money from Public.
- Because of the hybrid form of the business, it is required to comply with various rules & regulations and legal formalities.
- It is very difficult to wind up the business in case of exigency as there are a lot of legal compliances under Limited Liability Partnership (Winding Up and Dissolution) Rules and it is very lengthy and expensive procedure.