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# Limited Liability Partnership

## A New Business Vehicle for Indian MSMEs

### ABSTRACT

*In sole proprietorship/partnership firms, the liability of Proprietor/partners is unlimited. They have the exposure of their personal assets being appropriated & liquidated to meet proprietorship/ partnership dues. In case of companies the liability of promoter is limited. So, a need was felt for a new corporate form with operational flexibility on the one hand, and corporate personality as well as limited liability on the other. The LLP form of business is prevalent in many parts of the world including USA, UK, Canada, Germany, China, Singapore etc. LLP is a body corporate and a legal entity separate from its partners. Any two or more persons/ corporate may form a Limited Liability Partnership. No partner would be liable on account of the independent or un-authorized actions of other partners or their misconduct. Any firm, private company or an unlisted public company is allowed to be converted into LLP in accordance with the provisions of the Act.*

### 1. INTRODUCTION

The business in India is carried out by various forms of entities namely sole Proprietorship firms, Partnership firms & companies. Twenty first century has witnessed the tremendous growth of the Indian economy. The role played by Indian entrepreneurs as well as its technical and professional manpower has been acknowledged internationally. With the growth of economy the business has started growing beyond the boundaries of the nation, thereby increasing the risk incorporated in the business & the businessmen become more vulnerable to global events.

In case of sole proprietorship firms & partnership firms, the liability of Proprietor & partners respectively is unlimited. Proprietor/ each partner has the exposure of his personal assets being appropriated & liquidated to meet proprietorship/ partnership dues. In case of companies the liability of promoter is limited to the extent of their share holding. In this background, a need has been felt for a new corporate form that would provide an alternative to the traditional partnership, with operational flexibility on the one hand, and corporate personality as well as limited liability on the other.

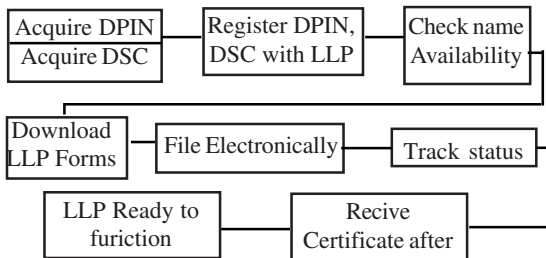
### 2. BACKGROUND

The "Limited Liability Partnership Act 2008" was introduced in India with presidential assent on 7th January, 2009. It is an outcome of recommendations of various expert groups viz. Naresh Chandra committee (2003) for "Regulation of Private Companies & Partnership", Dr.J.J.Irani Committee (2005) for New company Law, with a mandate to suggest a frame work for introducing LLP in India. The desirability of LLP form was also expressed in the context of small enterprises by Bhat Committee(1972), Naik Committee(1992) , Expert Committee on Development of Small Sector Enterprises headed by Sh. Abid Hussain in 1997 and Study Group on Development of Small Sector Enterprises (SSEs) headed by Dr. S P Gupta (2001).

The Limited Liability Partnership Act was notified on 31.3.2009 by Ministry of Corporate Affairs, the "Limited Liability Partnership Rules 2009" were notified on 1.4.2009, Conversion of Companies & Firm notified on 22.5.2009 w.e.f. 31.5.2009, Taxation For LLP Notified on 10.7.2009. First LLP was registered on 2.4.2009 & till 20.8.2009, 123 LLPs have been registered

in India. Winding up rules of LLPs are yet to be notified & registration of LLP is expected to gain momentum after the same.

**PROCESS TO START LLP**



**3. INTERNATIONAL STATUS**

The LLP form of business is prevalent in many parts of the world. In the USA the first LLP came in to existence in early 1990s. LLP were added to the Uniform Partnership Act (UPA) in 1996. This form is popular amongst the professionals in USA. In UK, The LLP Act 2000 become Law on the 1.4.2001. In Japan LLPs were introduced in 2005. In addition to this the LLP form also exists in Canada, Germany, China as well as in Singapore.

**4. FEATURES OF LLP**

It is a body corporate and a legal entity separate from its partners. Any two or more persons/ corporate may form a Limited Liability Partnership. It will have perpetual succession;

LLP will be liable to the full extent of its assets, with the liability of the partners being limited to their agreed contribution in the LLP. No partner would be liable on account of the independent or un-authorized actions of other partners or their misconduct. If acted with intent to defraud creditors or for any fraudulent purpose, the liabilities of the LLP and partners shall be unlimited. The LLP shall be under an obligation to maintain annual accounts reflecting true and fair view of its state of affairs. A statement of accounts and solvency shall be filed by every LLP with the Registrar on annual basis. The accounts of

LLPs shall also be audited, subject to any class of LLPs being exempted from this requirement by the Central Government. The Central Government have powers to investigate the affairs of an LLP, if required, by appointing competent Inspector for the purpose.

The compromise or arrangement including merger and amalgamation of LLPs shall be in accordance with the provisions of the LLP Act 2008. Any individual or body corporate may become partner of a LLP except following (in case of individual):

- .. Found to be of unsound mind by a court of competent jurisdiction & finding is in force.
- .. Un-discharged insolvent
- .. Applied to be adjudicated as an insolvent & application is pending.

LLP will have at least 2 designated partners, who will be individual and at least one Indian national. LLPs with all partners as body corporate or one or more partner as body corporate, at least two individuals, who are partner or nominees of body corporates shall act as designated partners.

A firm, private company or an unlisted public company is allowed to be converted into LLP in accordance with the provisions of the Act. After conversion, on and from the date of issue of certificate of registration by the Registrar, the effects of the conversion shall be such as are specified in the LLP Act. On and from the date of registration as per certificate of registration, all tangible (moveable or immoveable) and intangible property vested in the firm/ company, all assets, liabilities, obligations etc. relating to the firm/company shall be transferred to and shall vest in the LLP. The firm or the company converted, shall be deemed to be dissolved and removed from the records of the Registrar of Firms or Registrar of Companies, as the case may be. The Indian Partnership Act, 1932 shall not be applicable to LLPs.

Table 1

S. No.	Feature	Partnership	LLP	Company
1	<i>Governing Law</i>	Indian Partnership Act, 1932	Limited Liability Partnership Act, 2008	Companies Act 1956
2	<i>Registration</i>	Optional	Compulsory with ROC	Compulsory with ROC
3	<i>Creation</i>	By Contract	By Law	By Law
4	<i>Name of Entity</i>	Any name	Suffixed by LLP (Subject to availability)	Suffixed by Limited or Pvt. Ltd. (Subject to availability)
5	<i>Cost of Creation</i>	Negligible	Less than the cost	Minimum Fee for Pvt. company Rs.6,000 For Public company Rs.19,000
6	<i>Perpetual Succession</i>	No, it depends on will of partners	Yes	Yes
7	<i>Incorporating document</i>	Partnership Deed	LLP Agreement	Memorandum & Article of Association
8	<i>Legal proceedings</i>	Only registered partnership can sue third party	Being legal entity can sue & be sued.	Being legal entity can sue & be sued.
9	<i>Foreign participation</i>	Can not become	Can be partner.	Can be Share holder
10	<i>Number of Members</i>	2 to 20	Minimum 2 with no limitation on maximum number	2 to 50 for Pvt. Ltd Company & minimum 7 for limited company
11	<i>Ownership</i>	Jointly by partners of Assets	LLP independent of Partners owns the assets	Company independent of members owns the assets.
12	<i>Liability</i>	Unlimited, Can extend to personal assets of partners	Limited to the extent of the contribution in LLP	Limited
13	<i>Rights/Duties/Obligations</i>	Governed by	Governed by Partnership Deed	Governed by Article Of LLP Agreement Association & resolution passed by shareholders
14	<i>Annual filing</i>	Not required with Registrar of Firms	To be filed with Registrar Companies every year.	To be filed with Registrar of Companies every year.
15	<i>Requirement of Managerial Personnel for day to day administration</i>	No requirement	Designated partners	Directors
16	<i>Cessation as Member/partner</i>	As per agreement	As per agreement or in absence of same by giving 30 days notice	On Selling of Share holding.
17	<i>Taxability</i>	Income is Taxed at 30%, Education Cess also applicable	Income is Taxed at 30%, Education Cess also applicable	Income is Taxed at 30%, Education Cess also applicable
18	<i>Capital Contribution</i>	Not Specified	Not Specified	Pvt. Company minimum Rs.1.0 Lac & Public Company minimum Rs.5.0 lacs.

In order to provide more efficient & vigilant corporate governance, it has a provision for providing protection to employees, partners etc. who acts as a whistle blower.

## 5. COMPARISION OF PARTNERSHIP, LLP & COMPANY

Various features, when compared with each other reflect the picture as mentioned in table- 1.

## 6. CONCLUSION

Traditionally Indian Entrepreneurs prefers the proprietorship or partnership form

- of entity because of high compliance cost
- associated with the corporate form of entities.
- In the present era of Global Slowdown the
- prospective Micro, Small & Medium
- Entrepreneurs (MSMEs) will find the route of
- Limited Liability partnership more convenient
- to start their own business with comparatively
- lower compliance cost. It will enable
- professional expertise and entrepreneurial
- initiative to combine and operate in flexible,
- innovative and efficient manner, providing
- benefits of limited liability while allowing its
- members the flexibility for organizing their
- internal structure as a partnership. It is likely
- to be a big boost in providing necessary
- strength to the MSME sector in India

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