

LLP Act an amalgam of a Partnership and a Company

How is the LLP Act an excellent mixture of partnership and Company?

Limited Liability Partnership (for short “LLP”) is a body corporate formed and incorporated under the LLP Act and is a separate legal entity from that of its partners. In other words, it can be said that LLP is a mixture of incorporated Company and partnership. It is an ‘Alternative Business Vehicle’ or a ‘Hybrid’ that provides flexibility of limited liability with partnership structure that is the resultant outcome of the qualities extracted from the Indian Partnership Act, 1932 and Companies Act, 2013¹. As the name suggests, it pervades the benefits of Limited Liability and allows its members the flexibility of organizing their internal structure as a partnership based on mutual agreement while at the same time allowing its functions to be carried on as a company.

Since the time the LLP Act has been introduced in India, it has become an additional option for entrepreneurs, business owners and investors starting new ventures to incorporate their business as an LLP, instead of a traditional partnership firm or a company. Prior to the enactment of the LLP Act, entrepreneurs who wished to do business had to either register themselves as sole proprietors or partners or a body corporate. However, the LLP Act introduces an alternative business vehicle namely, an LLP, which offers a hybrid of the best characteristics of a traditional partnership firm and a company²

How LLP Act offers the desired flexibility in planning the structure and procedure to the enterprise, absent in the other previous enactments?

Owing to flexibility in its structure and operation, LLP would be useful for small and medium enterprises, in general, and for the enterprises in services sector, in particular. Internationally, LLPs are the preferred vehicle of business, particularly for service industry or for activities involving professionals. Introduction of LLP is expected to enable entrepreneurs, professionals and enterprises providing services of any kind or engaged in scientific and technical disciplines, to form commercially efficient vehicles suited to their requirements³. There is no bar on the maximum limit of the partners in the enterprise, which in turn enhances the possibility of getting the maximum number of business investors for the enterprise.⁴

MUTUAL RIGHTS AND OBLIGATIONS OF THE PARTNERS:

The mutual rights and duties of the partners and also between the partners and the LLP are governed by the LLP agreement. This provides the space to the partners to insert clauses best suited to the nature of the business of their LLP. Also, Schedule 1 of the LLP Act provides for some basic rules that shall come into picture in case no agreement for the same is made. This provides the flexibility in planning and organizing the structure of the enterprise.

LESSER COMPLIANCES:

The LLP is required to comply with lesser compliances as compared to Private Limited Company. For example, there is no mandatory provision with regard to holding any meeting or keeping the records of the meetings of partners/ designated partners. The accounts of every LLP are required to be audited by a Chartered Accountant. However, this does not come into effect until the turnover in any financial year exceeds forty lakhs rupees or the capital contribution exceeds twenty-five lakhs rupees.

TAX BENEFITS:

The profits will be taxed in the hands of the LLP and not in the hands of the partners, which save the possibility of double taxation issues.

¹www.aiftponline.org/journal/June%202011/In%20Pursuit%20of%20Knowledge_1.pdf

²www.internationalseminar.org/XV_AIS/TS%203/7.%20Mr.%20Utsav%20Gandhi.pdf

³www.secp.gov.pk/CLD/pub_cld/ConceptPaper_LL20140827.pdf

⁴An article on “Flexibility and Benefits of LLP”, available at <http://www.marketexpress.in/2013/04/flexibility-benefits-of-llp.html>

How it is advantageous to professionals and non- professionals?

Limited Liability Partnership and its advantages to professionals⁵ are:

- a. LLP has come like boon for the service sector and especially for professionals like chartered accountant/company secretaries & advocates. Now, LLP will give the professions the much needed impetus of global presence and level playing field against their foreign counterparts.
- b. From the perspective of professionals, the regime of limited liability partnership will provide a platform to conduct profession efficiently that would in turn increase the capability to compete with global firms apart from making the presence felt in international market for professional services.
- c. From the perspective of customers, Limited Liability Professional Partnership concerns will provide a single-window shop to all people wanting to avail professional services.
- d. The introduction of LLP form of business would also promote entrepreneurship, particularly in relation to the knowledge-based industries such as the information technology and biotechnology sectors.

Similarities between Company and Limited Liability Partnership⁶

Company	Limited Liability Partnership
Limited liability and perpetual succession	Limited liability and perpetual succession
Must have common seal	Common seal is optional
Provisions of approval of name, change of name are similar.	Provisions of approval of name, change of name are similar.
Registrar of companies is the administrative authority.	Registrar of companies is the administrative authority.
Provisions of name, its approval and change are similar.	Provisions of name, its approval and change are similar.
No personal liability of individual director or member (except of director of private company in some cases like income tax and sales tax dues).	No personal liability of partner, except in case of fraud.
Registrar of companies can strike off name of defunct company.	Registrar of companies can strike off name of defunct Limited Liability Partnership.
Company can be wound up voluntarily or by order of Court	Limited Liability Partnership can be wound up voluntarily or by order of Court

Similarities between Partnership and Limited Liability Partnership⁷

Partnership	Limited Liability Partnership
Partner is not employee of firm.	Partner is not employee of LLP.
Partner of firm entitled to remuneration only if	Partner of LLP entitled to remuneration only if LLP

⁵ www.llponline.in/uploads/llpnewsletter/LLP%20Mantra_II.pdf

⁶ humanresource-legalcompliance.blogspot.in/2010/09/similarities-between-company-and.html

⁷ Available on <http://taxguru.in/corporate-law/comparison-between-traditional-partnership-and-llp.html>

partnership agreement so provides.	agreement so provides.
New partner can be introduced only with consent of all existing partners.	New partner can be introduced only with consent of all existing partners, unless LLP Agreement provides otherwise.
Insolvent person cannot continue as partner of firm.	Insolvent person cannot continue as partner of LLP.
Rights of partnership can be assigned.	Rights of partnership can be assigned.
Partner liable to firm for any personal profits made by him by use of property, name or business connection of firm.	Partner liable to LLP for any personal profits made by him by use of property, name or business connection of LLP.
Partner cannot undertake competing business without consent of other partners.	Partner cannot undertake competing business without consent of LLP. Otherwise, liable to account for and pay profits to LLP.
Partner liable to firm if he commits fraud.	Partner liable to LLP if he commits fraud.

What are the disadvantages of LLP over other forms of enterprises?

The Disadvantage of LLP over other forms of enterprises is:⁸

- a. It is a regulated form of Business as the LLP Act, 2008 provides for various provisions to regulate the management and affairs of the enterprise.
- b. Audit and Financial Disclosures are required and are available for public inspection, which is why no financial secrecy can be maintained.
- c. Long Closing Proceedings for the LLP.
- d. Transfer of Interest is not very easy as it needs to be in accordance with the LLP agreement.
- e. Amendment in LLP Agreement needs to be executed in case the agreement is not properly drafted or admission of new partner or in various other circumstances.
- f. Lack of Recognition as it is a new law and is not recognised for carrying various business for the reason it being a relatively new concept, which creates problems in the smooth functioning of the same.
- g. LLP cannot come out with its IPO and raise money from public unlike Company form of organisation.

Comparative chart showing the differences and significant features between LLP, Private Limited Company and Partnership Firm

The Points of Comparison between LLP, Private Limited Company and Partnership Firm are:

Basis	LLP	Private Limited Company	Partnership
Registration	To be mandatorily registered with Registrar of Companies under the Central Government.	To be mandatorily registered with Registrar of Companies under the Central Government.	Registration is optional
Minimum	Minimum 2 partners	Minimum 2 in case of Private Company.	Minimum 2 partners.
Legal entity	LLP is a separate legal entity registered under LLP Act, 2008.	Company is a separate legal entity registered under Companies Act, 2013.	Not a separate legal entity

⁸http://www.startbizindia.in/llp_benefits_incorporation.php

Name	Name to end with "LLP" or Limited Liability Partnership"	Name of a private company to end with the words "private limited"	Any name as per choice
Capital contribution	Not specified	Private company should have a minimum paid up capital of Rs. 1 lakh.	Unlimited may extend to their personal assets
Meetings	Not required.	Quarterly Board of Directors meeting, annual shareholding meeting is mandatory.	There is no provision in regard to holding of any meeting
Annual Return	Annual statement of accounts and solvency & Annual Return has to be filed with ROC.	Annual Accounts and Annual Return to be filed with ROC	No return except Tax returns
Dissolution	Less procedural compared to company. Voluntary or by Order of National Company Law Tribunal.	Very procedural. Voluntary or by Order of National Company Law Tribunal.	By agreement, mutual consent, insolvency, certain contingencies, and by court order.
Bankers' perception of creditworthiness of the entity	Creditworthiness is higher compared to that of a partnership but lesser than a company.	High creditworthiness, due to stringent compliances and disclosures required.	Credit worthiness of firm depends upon goodwill and credit worthiness of its partners
Liability of shareholder s/ LLP partners.	Limited to the extent of the contribution to the LLP, except in case of deliberate fraud.	Limited to the extent of the unpaid capital.	Partners have unlimited liability
Common Seal	Optional	Compulsory	No common seal
Perpetual Existence	Yes. Subject to Dissolution & Winding up.	Yes. Subject to Dissolution & Winding up.	No.
Admission of Minor as participant.	Minor cannot be a partner in a LLP.	Legal Guardian can hold the shares of the company on behalf of the Minor.	Minor can be admitted to the benefits of the partnership.
Assessed as a separate & distinct entity under the Income Tax Act, 1961.	Assessed as a separate & distinct entity under the Income Tax Act, 1961.	Assessed as a separate & distinct entity under the Income Tax Act, 1961.	
Allowable as deduction in the hands of LLP subject to limits.	Not Allowed as a deduction.	Allowable as deduction in the hands of Registered Firm subject to limits.	
Allowable as deduction in the hands of LLP subject to limits.	Allowable as deduction in the hands of Private Company. No limits.	Allowable as deduction in the hands of Registered Firm subject to limits.	
No tax to be paid by the LLP on distribution. Exempt in the hands of the partners.	Private Company to pay Dividend Distribution Tax on dividends. Exempt in the hands of the shareholders.	No tax to be paid by the Partnership on distribution. Exempt in the hands of the partners.	

Not Taxable. Except in case of Private Company converted into LLP – for the first three years after conversion	Taxable as deemed dividend u/s 2(22)(e), if certain conditions are met.	Not Taxable
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Conclusion

Limited liability Partnership “LLP” is a new corporate structure that combines the flexibility of a general partnership and the advantages of limited liability of a company at a low compliance cost. In other words, it is an alternative corporate business vehicle that provides the benefits of limited liability of a company, but allows its members the flexibility of organizing their internal management on the basis of a mutually arrived agreement, as is the case in a general partnership firm. LLP is a partnership in which all the partners have limited liability in an incorporated entity and is a legal entity separate from its partners. Existence of LLP is not dependent upon its members/partners because it has recognition of separate legal person as per law. Unlike corporate shareholders, the partners in an LLP have the right to manage the business directly. In contrast, corporate shareholders have to elect a board of directors to manage the affairs of company. Therefore, it can very well be concluded that LLP is an amalgamation of the best characteristics of both, a company and a LLP.