

LLP: AN EMERGING BUSINESS MODEL

Gaurav N. Pingle & Pranav S. Asnikar



Limited Liability Partnership ("LLP") is considered an alternative corporate business vehicle that provides the benefits of limited liability and allows its partners the flexibility of organizing their internal structure as a partnership, based on a mutually arrived agreement. Therefore, it contains elements of both forms - 'corporate' as well as 'partnership firm'.

Salient Features of an LLP :

1. LLP is a body corporate enjoying the status of a separate legal corporate entity having perpetual succession.
2. There is a separate legislation - LLP Act, 2008 ("LLP Act") governing LLP formation and functioning, and LLPs are regulated by the contractual agreement between the partners.
3. Every LLP shall use the words "Limited Liability Partnership" or its

acronym "LLP" as the last words in its name.

4. Every LLP shall have at least two Designated Partners ("DPs"), at least one of them being resident in India and each partner shall be the agent of the LLP but not of the other partners.
5. LLP Agreement is not mandatory but in its absence, mutual rights and liabilities of partners shall be determined as provided under the LLP Act.

Major Advantages of incorporating LLP :

1. No restrictive provisions relating to managerial remuneration for LLPs.
2. No elaborate formalities for the conduct of meetings, record-keeping, filings in case of LLPs.

3. No exposure to personal assets of the partners of LLPs except in case of fraud.

4. As of now, there is lesser government intervention for LLPs.

5. LLPs are not required to appoint a Company Secretary in whole time employment nor do they need to obtain Secretarial Compliance Certificate from a Company Secretary.

6. Designated Partners of LLPs are not required to retire by rotation.

7. LLPs are not required to conduct meetings at specific intervals unlike in a Company.

8. Statutory Auditors of LLPs are not required to retire each year.

Comparative Analysis of LLP & Company :

Sr. No.	Particulars	LLP	Company
1.	Objective of Incorporation	Should be profit making.	Either profit making or non-profit making.
2.	Charter Documents	LLP Agreement is an integral document which will bind the activities of partners, DPs and activities of the LLP.	Memorandum of Association and Articles of Association define the constitution and internal structure of the company.
3.	Minimum no. of Partners or Directors	Minimum two DPs are required.	Private Company - Minimum two Directors and; Public Company - Minimum three Directors.
4.	Accountability for compliances	At least two DPs should be appointed, who will be accountable for regulatory & legal compliances.	Company Secretary (in certain cases) or any other Director or Officer according to provisions of Companies Act shall be accountable for regulatory & legal compliances.
5.	Capital Contribution	Not specified.	Minimum Paid up Share Capital shall be: Private Company: Rs 1 lakh & Public Company: Rs 5 lakhs
6.	Requirement of Statutory Audit	If turnover exceeds Rs 40 lakhs OR contribution exceeds Rs 25 lakhs.	All companies need to get their financial statements audited by Auditor in accordance with the provisions of the Companies Act.
7.	Annual Filing of documents	i. Filing of Statement of Accounts & Solvency –within 30 days after the completion of 6 months from the end of financial year; ii. Filing of returns within 60 days from the end of Financial Year.	i. Balance Sheet & Statement of Profit and Loss shall be filed within 30 days after Annual General Meeting (“AGM”); ii. To be filed within 60 days from the date of the AGM.
8.	Maintenance of Minutes	No such provision in LLP Act, 2008.	Compulsory as per provisions of the Companies Act.
9.	Taxation	Taxation Provisions of LLP are the same as applicable to partnership concerns.	There are separate provisions for companies.
10.	Conversion of status of business organisation	Partnership firm, Company (Private or Public) can be converted into LLP but an LLP cannot be converted into a Company.	Sole Proprietorship, Partnership firm, Joint Hindu Family Business can be converted into a Company.



9. LLPs are not required to disclose Related Party Transactions.

Conversion of an existing Partnership Firm into LLP:

1. Any existing partnership firm that is willing to get converted into an LLP will need to apply to the Registrar in a prescribed format. On registration of the LLP, all assets and liabilities of the partnership firm shall be transferred to and vest in the LLP, and the partnership firm shall be dissolved. If it had earlier been registered under the Indian Partnership Act, 1932, the firm stands removed from the records maintained under the said Act.
2. The LLP shall ensure that every official correspondence of the LLP bears a statement that it was converted from a partnership firm to LLP and the name and registration, if applicable, of the partnership firm from which it was converted is

mentioned for a period of 12 months from the conversion date.

Conversion of Existing Private/ Unlisted Public Company into an LLP:

1. Any private company/unlisted public company that is willing to get converted into an LLP will need to apply to the Registrar in a prescribed format. Following the registration of the LLP all assets and liabilities of the company shall be transferred to and vest in the LLP, and the company shall be deemed to be dissolved and removed from the records of the Registrar.
2. The LLP shall ensure that every official correspondence of the LLP bears a statement that it was converted from a Company into an LLP. The name and registration of the company from which it was so converted, is mentioned for a period of 12 months from the conversion.

3. It is to be noted that listed public companies cannot be converted into LLPs.

Conclusion :

The LLP model is a recognition of the changing needs of businesses in today's times. It would be helpful as an alternative corporate business vehicle for professional partnerships which are anxious about their exposure to liability.

In view of the growth of the Indian service industry in recent times, LLPs would further contribute to the growth of the same and a large number of existing companies, public as well as private, are expected to convert into LLPs after analysing the benefits of the LLP as an entity.

Gaurav. N. Pingle and Pranav. S. Asnikar are both qualified Company Secretaries based in Pune.