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LIMITED LIABILITY PARTNERSHIPS IN INDIA

– The New Age Business Vehicle



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PREFACE

The dynamic business environment we live in today calls for constant change and upgradation. In order to remain relevant, there is need for a business structure that appeals to business and service sectors alike with lesser restrictions and government intervention. The company form of business structure is one such favorite but not without its inherent limitations. It is now that Limited Liability Partnership (LLP), a form of business entity introduced in 2008, is coming into picture. Their popularity, however, is not as much as the benefits offered and the advantages over other forms of entities. LLP provides nearly all the benefits of a private limited company while eliminating the downsides of a partnership firm.

LLPs offer tax advantages, can accommodate unlimited number of partners and are credible of being registered with the Ministry of Corporate Affairs (MCA). At the same time they have fewer compliances than private limited companies and are also significantly cheaper to start and maintain.

In India, LLPs are governed by the provisions of the Limited Liability Partnership Act, 2008 (LLP Act) (effective by way of notification dated 31 March 2009) and the Limited Liability Partnership Rules, 2009 (LLP Rules). LLP Act is applicable to the whole of India including the state of Jammu & Kashmir, unlike the Indian Partnership Act, 1932, which does not extend to that state.

Key Highlights of LLP

1.	Alternate Minimum Tax (AMT)	AMT is applicable only to those LLPs which claim tax holiday under section 10AA or chapter VIA of the Income-tax Act, 1961. Rate of taxation for AMT: <ul style="list-style-type: none">■ Where adjusted total income is less than Rs. 1 crore – 19.055%■ Where adjusted total income exceeds Rs. 1 crore – 21.3416%
2.	Dividend Distribution Tax (DDT)	DDT which is applicable in case of companies on dividends distributed @ 20.36% is not applicable to LLPs. Further, in case of resident individuals/HUFs having dividend income in excess of Rs. 10 lacs, tax @10% is chargeable with effect from financial year 2016-17.

3.	Income Computation and Disclosure Standards (ICDS)	ICDS is applicable to only those assesseees who follow mercantile system of accounting. Unlike company which has to compulsorily follow the mercantile system of accounting, LLP can adopt either cash or mercantile system of accounting. Accordingly, ICDS shall not be applicable to LLP which follows cash system of accounting.
4.	Foreign Direct Investment (FDI)	FDI is now permissible in LLP in sectors/ activities where 100% FDI is allowed under automatic route.
5.	Governance	Minimum governance and compliance requirements as compared to a company. Board meetings and General meetings not required.

Rationale of the LLP Act

The basic purpose of the legislation is to provide for a new vehicle for conduct of business with the twin objectives of limiting the liability of the persons undertaking that business and simultaneously providing them absolute flexibility in the manner of running the business and defining, managing and regulating their relations inter-se. The general restrictions of partnerships, i.e. unlimited liability of partners impairs their entrepreneurial growth which has led to the emergence of the LLP Act; a notable attribute of this legislation being insulating the personal assets of the partners from meeting the liability of the LLP.

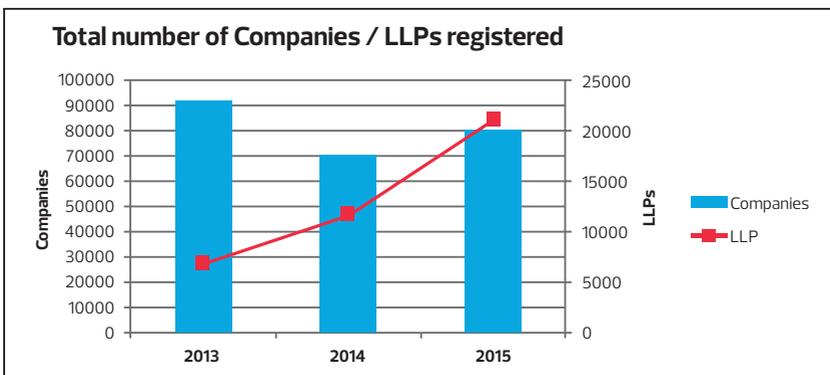
LIMITED LIABILITY PARTNERSHIPS
- THE NEWAGE BUSINESS VEHICLE



LLPs are rapidly emerging as an alternative to companies and partnership firms which have traditionally been used as forms of business entities. LLP is a hybrid form of business entity which combines the merits of a company and a partnership. It provides the benefits of limited liability, greater tax efficiency and allows its members the flexibility of organising their internal structure as a partnership based on a mutually arrived at agreement.

- LLP shall be a body corporate and a legal entity separate from its partners.
- It will have perpetual succession.
- The liability of the partners would be limited to their agreed contribution in the LLP.
- Capital contribution and profit or loss sharing ratio can be different.
- Professionals can form multi-disciplinary professional LLP, for which firm was formed earlier.
- Freedom to define the internal structure mutually as per the agreement.

Up till the month of February 2016, the total number of companies registered in India was about 15.35 lakhs (of which 10.83 lakhs were active companies) and that of LLPs stood at about 0.55 lakh (of which 0.54 lakh were active LLPs). There has been a rise in the number of LLPs registered over the 3 years. The chart below represents the number of companies and LLPs registered during the past 3 years.



From the above, it can be seen that although the number of registrations of the companies is higher than that of LLPs, there is an upward trend in terms of growth of LLPs.



2.1 Important Provisions of the LLP Act, 2008

2.1.1 Provisions at a glance

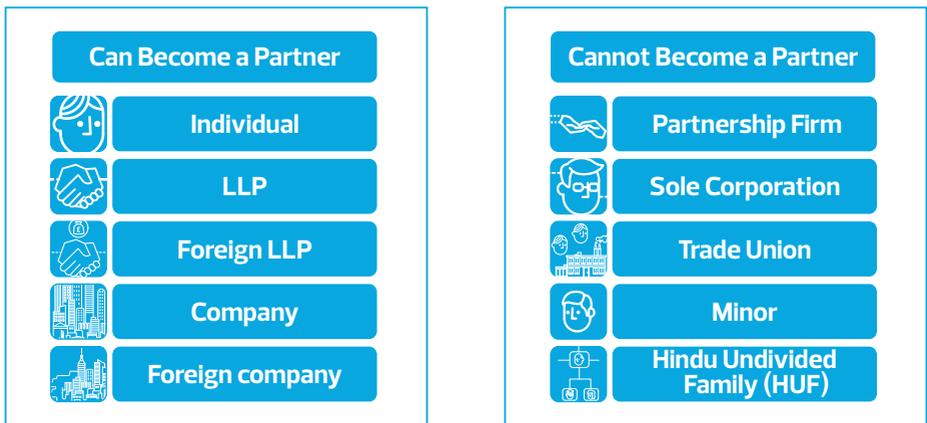
LLPs are governed by the LLP Act, 2008. The key provisions of the LLP Act and the LLP Rules are summarised below.

Applicable Section / Rule	Provisions in brief
Section 5	An individual or body corporate may be a partner in LLP.
Section 6	Every LLP shall have at least two partners.
Section 7 (1)	An LLP shall have two designated partners and at least one of them shall be resident in India.
Section 28 (1)	Partner is not personally liable, directly or indirectly for an obligation of the limited liability partnership whether arising in contract or otherwise.
Section 30	Unlimited liability of LLP and partners in case of fraud.
Section 31	Concept of whistle blower in LLP, i.e. to reduce or waive any penalty leviable against any partner or employee on the conditions specified therein.
Section 32 (1)	Contribution by partners may be tangible, intangible, movable or immovable.
Section 34 (2)	Statement of Account and Solvency to be prepared within six months from end of Financial Year.
Section 35 (1)	Annual Return must be filed with the Registrar of Companies (ROC) within 60 days of closure of its Financial Year.
Sections 60 - 62	Compromise or arrangement between LLP and its creditors or partners.
Section 63	Winding up of LLP - Voluntary or by the Tribunal and its dissolution.
Section 64	Circumstances in which LLP may be wound up by the Tribunal.
Section 69	Late filing of documents with ROC – can be filed upto 300 days from the date within which it should have been filed on payment of fees of Rs. 100 for every day of such delay along with original filing fees.

Applicable section/ Rule	Provisions in brief
Schedule I of the LLP Act	Provisions regarding matters relating to mutual rights and duties of partners and LLP and its partners applicable in the absence of any agreement on such matters.
Schedule II of the LLP Act	Conversion of firm into LLP.
Schedule III of the LLP Act	Conversion of private company into LLP.
Schedule IV of the LLP Act	Conversion of unlisted public company into LLP.
Rule 24 of LLP Rules	Every LLP to maintain books of account and they shall be preserved for 8 years.
Rule 24 (8) of LLP Rules	Accounts of LLP must be audited in case contribution/turnover exceeds 25 Lakhs/40 Lakhs.

2.1.2 Partners

The following chart shows the eligibility criteria to become partners in LLP



As per Section 5 of the LLP Act, any individual or body corporate may be a partner in an LLP unless:

- He has been found to be of unsound mind by a court of competent jurisdiction and the finding is in force;

- He is an undischarged insolvent; or
- He has applied to be adjudicated as an insolvent and his application is pending.

2.1.3 Designated Partners

Pursuant to Section 6 of the LLP Act:



2.1.4 Liabilities of Designated Partner

Unless expressly provided otherwise in the LLP Act, a designated partner shall be:

- Responsible for doing all the acts, matters and things as are required to be done by the LLP in respect of compliance of the provisions of the LLP Act, including filing of any document, return, statement and the like pursuant to the provisions of the LLP Act and as may be specified in the LLP agreement; and
- Liable to all penalties imposed on the LLP for any contravention of any provisions.

2.1.5 Rationale for having a designated partner

The purpose of specifying some (or all) partners as designated partners is to make and hold them responsible and answerable for doing all acts required to be done by the LLP in compliance with the LLP Act and as may be specified in the LLP agreement. He is also liable to all penalties imposed on the LLP for non–

compliance with any provisions of the LLP Act. As this responsibility could be onerous, every person has to give his prior consent to be become designated partner.

As a result of specifying some (and not all) of the partners as designated partners, the other partners, who are not specified as designated partners, are relieved of the responsibility and freed from being made answerable for ensuring compliance.

If no designated partner is appointed or if at any time there is only one designated partner, each partner shall deemed to be a designated partner. (Section 9 of LLP Act)

2.1.6 LLP Agreement

Section 23 of the LLP Act, governs the LLP agreement. It provides that:

- The mutual rights and the duties of the LLP and its partners shall be governed by the LLP agreement between the partners or between the LLP and its partners.
- The LLP Agreement and any changes made therein shall be filed with the Registrar of LLPs.
- In the absence of agreement as to any matter, the mutual rights and the duties of the partners and the mutual rights and the duties of the LLP and the partners shall be determined by the provisions set out in the First Schedule of the LLP Act.

It must be pointed out that the LLP agreement needs to be carefully prepared as it provides the basis and the mutual rights and obligations of the partners. The LLP Act provides a great degree of flexibility in terms of capital contribution, profit/loss sharing ratio, admission/retirement of partners, management of affairs of the LLP, dispute resolution, etc. and as a result the LLP agreement becomes a crucial document.

2.1.7 Permissible Business(es) under LLP

An LLP may undertake any business, trade, profession or service. However, there

are certain exceptions such as:

1. Where the LLP intends to have FDI, it may have to, before deciding its business activity, consider in the Foreign Exchange Management (Transfer Or Issue Of Security By A Person Resident Outside India) Regulations, 2000:
 - List of activities or items for which automatic route of Reserve Bank for Investment from Persons Resident Outside India is not available
 - Sectoral cap on Investments by Persons Resident Outside India.
2. Carrying on business as Non Banking Financial Companies (NBFC) – RBI norms for NBFC requires an entity to be Company registered under the Companies Act, 1956 / 2013.
3. LLP is formed essentially for 'carrying on a lawful business with a view to profit'. Hence LLP cannot be formed with non-profit making objective.
4. Where regulatory approval is required with respect to the main business activity, such approval is required to be obtained before incorporation / conversion.

2.1.8 Name of the LLP

As per Section 15 of the LLP Act, every LLP shall have the words Limited Liability Partnership or the acronym 'LLP' as the last words of its name. An application is required to be made in e-form 1 to the office of the Registrar. On successful process of the application, the name is made available and is valid for a period of 3 months from the date of issue of the name availability letter.

2.1.9 Capital Contribution and Profit Sharing Ratio

An LLP offers flexibility for profits sharing, i.e. differently amongst different partners.

- If the partners so agree, the Profit Sharing Ratio and the Loss Sharing Ratio

may be different i.e. the profits may be shared in a certain ratio and losses in another ratio.

- The partners may agree that one or more partners would share profits only and will not have to share losses at all.

It is not possible for one or more partners agreeing to share only losses and not sharing any profits. LLP exists where there is a business undertaken with a view to profit. Since the fundamental characteristic of sharing profits would be missing if they agree to share only losses, this is not a possibility.

In the absence of the LLP agreement, First Schedule of the LLP Act specifies that all the partners are entitled to equal share in the capital, profits and losses in the LLP.

As per section 33 of the LLP Act, the obligation of partner to contribute money or other property or other benefit or to perform services for the LLP shall be as per the LLP Agreement. As such, a partner's contribution may consist of both tangible and/or intangible property and any other benefit to the LLP. The monetary value of contribution of each partner shall be accounted for and disclosed in the accounts of the LLP. The contribution of a partner consisting of tangible, movable or immovable or intangible property or other benefits brought or contributed by way of an agreement or contract for services shall be valued by a practicing Chartered Accountant or by a practicing Cost Accountant or by approved valuer from the panel maintained by the Central Government.

2.1.10 Rights and Obligations of Partners

The mutual rights and duties of the partners of an LLP and the mutual rights and duties of an LLP and its partners, shall be governed by the LLP agreement. In the absence of such an agreement, the mutual rights and duties of the partners and the mutual rights and duties of the LLP and the partners shall be determined by the provisions relating to that matter as set-out in the First Schedule of the LLP Act (Appendix.) 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 first schedule.

2.1.11 Admission of Partner

First schedule of the LLP Act specifies that no person may be introduced as a partner without the consent of all the existing partners.

2.1.12 Expulsion of partner

First schedule of the LLP Act specifies that no majority of partners can expel any partner unless a power to do so has been conferred by express agreement between the partners.

To this effect the LLP agreement should contain a clause for expulsion of partner specifying, any partner who is acting in contravention to the agreement, interest of the LLP can be expelled from the LLP by a vote of majority of partners of the LLP or in such a manner as laid out in the clause.

2.1.13 Management and Administration

The designated partners are primarily responsible for the compliance of the provision of the Act and LLP Agreement.

First Schedule of the LLP Act specifies that every partner may take part in the management of the LLP. Further, it specifies that any matter or issue relating to the LLP shall be decided by a resolution passed by a majority in number of partners.

The LLP agreement offers the flexibility to specify acts, matters or things, if any, which can be done

- with the consent of all the partners
- with the consent of requisite number or percentage of partners
- with the consent of majority of the partners

- with the consent of the governing board or executive board constituted from amongst the partners, if any.

As per section 42 of the LLP Act, a partner's economic right (i.e. right of a partner to a share of the profits and losses of the LLP and to receive distribution at the time of winding up) in the LLP shall be transferable wholly or in part. However, such transfer does not entitle the transferee or assignee to participate in the management or conduct of the LLP's activities. Therefore, the transferee would not be deemed to be a 'partner' of the LLP just because a partner has transferred him the 'economic rights'. For becoming a partner of LLP, the manner specified in the LLP agreement or the provisions of the Act would have to be followed.

A partner may lend money to and transact other business with the LLP and shall have the same rights and obligations with respect to the loan or other transactions as a person who is not a partner.

2.1.14 Remuneration of Partners

LLP agreement can specify the remuneration, the partners can draw and in addition to the specific percent, in case of profit during the financial year.

In the absence of the LLP agreement though, first schedule of the LLP Act specifies that no partner shall be entitled to remuneration for acting in the business or management of the LLP.

This however would be subject to the income tax regulations and implications as discussed in chapter 3.

2.1.15 Winding up and Dissolution

As per rule 35(15)(i) of the LLP Rules, the winding up of an LLP may be either voluntary or by Tribunal.

Any LLP may be wound-up voluntarily if the LLP passes a resolution to wind up the LLP with approval of at least three-fourths of the total number of its partners. Where the LLP has creditors, whether secured or unsecured, approval of such

creditors should be obtained for such winding up.

LLP may be wound up by the Tribunal if the LLP is unable to pay its debts.

2.1.16 Goodwill

The partners of the LLP can specify matters related to goodwill in the LLP agreement. Such matters may come up at the time of dissolution of the LLP, admission, death or retirement of partners and as such it is essential that the manner of distribution of goodwill amongst the partners is specified.

Under the Indian Partnership Act, 1932, where the partners have made no provision for sale of goodwill on dissolution in the agreement, it has to be included in the assets of the firm and be sold separately or along with the property of the firm.

Provision can be made in the agreement that on death of a partner, the goodwill be taken over or retained by the continuing partners; that the goodwill be distributed only to the members of the Governing / Executive Board, or on such other terms as mutually decided by the partners.

2.1.17 Indemnification

LLPs have the freedom to draft their indemnity clause in the LLP agreement as per the requirement of their business.

However, as per First Schedule of the LLP Act, 2008,

LLP shall indemnify each partner in respect of payments made and personal liabilities incurred by him

- (a) in the ordinary and proper conduct of the business of the LLP; or
- (b) in or about anything necessarily done for the preservation of the business or property of the LLP.

Also, every partner shall indemnify the LLP for any loss caused to it by his fraud in

the conduct of the business of the LLP.

2.1.18 Stamp Duty on LLP Agreement

LLP Agreement needs to be stamped in accordance with the laws of the state in which the LLP is registered.

In Maharashtra, the stamp duty applicable on an instrument of any partnership inclusive of Limited Liability Partnership is as below:

(a) where there is no share of contribution in partnership, or where such share contribution brought in by way of cash does not exceed Rs. 50,000.	Rs. 500
(b) where share contribution brought in by way of cash is in excess of rupees 50,000.	1% of the amount of share contribution subject to maximum of Rs. 15,000
(c) where such share contribution is brought in by way of property, excluding cash.	The same duty as is leviable on a Conveyance under clause (a), (b) or (c), as the case may be, of Article 25 of the Maharashtra Stamp Act, on the market value of such property.

2.2 Compliance Chart for LLP

2.2.1 Annual Compliances

Event	Timeline	Form
Annual return to be filed with ROC	Within 60 days of closure of Financial Year	Form 11
Statement of Accounts & Solvency	Within 30 days from the expiry of six months from the end of each financial year.	Form 8

2.2.2 Event based Compliances

Event	Timeline	Form
Changes in the LLP agreement	Within 30 days from the execution of the supplementary agreement / change in agreement	Form 3
Changes in designated partners/ partners	Within 30 days of the date of admission/ cessation of partner	Form 4
Change of name of LLP	Within 30 days of the event	Form 5
Change of place of registered office	Within 30 days of the event	Form 15

2.3 Comparison of LLP with Private Company, Public Company and Partnership Firm

Sr. No.	Criteria	Limited Liability Partnership	Private Company	Public Company	Partnership Firm
1.	Applicable Law	Limited Liability Partnership Act, 2008	Companies Act, 2013/1956	Companies Act, 2013/1956	Partnership Act, 1932
2.	Charter Documents	LLP agreement	Memorandum and Articles of Association	Memorandum and Articles of Association	Partnership Deed
3.	Number of Members	Minimum – 2 Maximum – No limit	Minimum – 2 Maximum – 200	Minimum – 7 Maximum – No limit	Minimum – 2 Maximum – 20
4.	Liability of Partners / Member	Limited	Limited	Limited	Unlimited
5.	Legal Entity	Yes, can sue or be sued in the name of LLP	Yes, can sue or be sued in the name of the Company	Yes, can sue or be sued in the name of the Company	No separate legal entity
6.	Need to Appoint KMP/CS	No	No, except Company Secretary	Yes. Subject to applicability	No

Sr. No.	Criteria	Limited Liability Partnership	Private Company	Public Company	Partnership Firm
7.	Board Meetings	Depends on the procedure prescribed in the LLP agreement	Mandatory, at least four (4) in every year	Mandatory, at least four (4) in every year	Depends on the procedure prescribed in the Partnership Agreement
8.	Shareholders Meeting	Not applicable	Mandatory	Mandatory	Not Applicable
9.	Preparation of Minute Book	Depends on the procedure prescribed in the LLP agreement	Mandatory	Mandatory	Not Mandatory
10.	Maintenance of Statutory Registers	Not applicable	Mandatory	Mandatory	Not Applicable
11.	Conversion	Can be converted into a Company	Can be converted into LLP or a Public company	Can be converted into LLP or a Private company	Can be converted to LLP or a company
12.	Directorship / Partnership	Foreign national can be a partner in the LLP subject to FEMA Regulations	Foreign national can be a Director in the Company	Foreign national can be a Director in the Company	Foreign national cannot be a Partner in partnership firm (except in case of NRI/PIO subject to FEMA Regulations)

2.4 Relief to LLPs from Pain Points in the Companies Act, 2013

With the enactment of the Companies Act, 2013 (most of the provisions effective from 1 April 2014), various new restrictions have been imposed on private and

public companies alike, which have made compliances enormous and cumbersome. Some of them may also deter the incorporation of new companies. Thus, it is essential to note certain critical aspects of the Companies Act, 2013 before one can conclude on the merits of the new upcoming business vehicle i.e. the LLP.

They are produced as below:

Sr. No.	Relevant Section of the Companies Act, 2013	Provision in brief
1.	73	Restrictions on acceptance of deposits from shareholders of the company and other parties.
2.	135	Mandatory Corporate Social Responsibility spending, subject to applicability.
3.	138	Requirement of Internal Audit.
4.	173	Mandatory Board Meetings and General Meetings.
5.	177,178, 134	Need for establishing governance mechanism for Enterprise Risk Management, Legal Compliance framework, Internal Financial Control.
6.	180	Restriction on borrowings for Public Companies.
7.	185	Restriction on loans, guarantees and investments to directors and any other person in whom the director is interested.
8.	186	Restrictions on loans, guarantees and investments.
9.	188	Restrictions on related party transactions.
10.	203	Mandatory appointment of KMP, subject to applicability.

It will be safe to say that the above mentioned provisions of the Companies Act, 2013 *will not apply to an LLP* unless prescribed or incorporated in LLP agreement. This is also subject to the Central Government making provisions for the applicability of such sections to LLP in future.



3.1 FDI in LLP

Earlier, FDI under the automatic route was allowed only in a company (Private Limited or Limited Company) incorporated under the Companies Act, 1956/2013 or Venture Capital Funds.

Thereafter it has been decided a Limited Liability Partnership (LLP) formed and registered under the LLP Act, 2008 shall be eligible to accept FDI subject to certain conditions. FDI in a Limited Liability Partnership (LLP) required prior Government approval.

However, vide **amendments to the Consolidated FDI Policy Circular of 2015**, the Department of Industrial Policy and Promotion, Ministry of Commerce & Industry, Government of India has, on **10 November, 2015**, allowed **FDI in LLPs, which are operating in sectors/activities where 100% FDI is allowed under the automatic route and there are no FDI-linked performance conditions.**

Highlights of the changes in FDI policy announced with respect to LLP

- 100% FDI under automatic route in LLP is allowed for businesses operating in sectors/activities where 100% FDI is allowed, through the automatic route and there are no FDI-linked performance conditions.
- For the purpose of FDI, valuation from a Chartered Accountant is required in respect of capital contribution to the LLP.

- **Downstream Investment permitted**

LLPs having foreign investment will also be allowed to make downstream investment in another company or LLP in sectors in which 100% FDI is allowed under the automatic route and there are no FDI-linked performance conditions.

- Under the FDI Policy, with respect to LLP:

- Control shall mean the right to appoint majority of the designated partners and such designated partners having control over the policies of the LLP.
- LLP shall be considered as owned by a resident Indian citizen if more than 50% of the investment in the LLP is contributed by the resident Indian citizen and/or entities which are ultimately owned and controlled by resident Indian citizens and such resident Indian citizens and entities have majority of the profit share.
- For the purpose of downstream investment by LLP, internal accruals will mean as profits transferred to reserve account after payment of taxes.

3.2 Taxation of LLP

3.2.1 Income Tax Aspects

When one talks of the tax implications on an LLP, it is observed that the Income-tax Act provides for the same taxation regime for an LLP as is applicable to a partnership firm i.e. LLP is treated at par with firm under the Income Tax Act for tax treatment. The rate of taxation applicable to LLPs is:

Total Income	Rate of Taxation
Upto Rs. 1 crore	30.90% (tax rate 30% plus education cess 3% thereon)
Exceeding Rs. 1 crore	34.608% [(tax rate 30% plus surcharge 12% thereon) plus education cess 3% thereon]

There is taxation in the hands of the LLP and exemption from tax in the hands of its partners. LLP being treated as a firm for taxation purposes has the following tax advantages over a company under the Income-tax Act:

- (i) It is not subject to Minimum Alternate Tax; although certain LLPs (availing profit /invest linked deduction) are covered under AMT which is akin to MAT
- (ii) It is not subject to Dividend Distribution Tax (DDT) with respect to dividend

distributions by the LLP. On the other hand, effective DDT rate of 20.36% is applicable on distribution of dividends by a company.

There are specific provisions with respect to allowability of remuneration and interest paid to partners while arriving at the taxable income for the LLP. Remuneration paid to working partner is allowable as a deduction subject to certain limits. A working partner is an individual who is actively engaged in conducting the affairs of the business or profession of the firm of which he is a partner. The quantum of allowance is dependent on the 'book profits'.

The maximum ceiling of remuneration allowable is tabulated below:

Book profits	Limit
On first Rs. 3,00,000 or in case of a loss	Higher of Rs.150,000 or 90% of book profits
On the balance of book profits	60% of book profits

Further, interest paid to a working partner upto the maximum limit of 12% p.a is allowable. An additional condition to claim partners' remuneration and interest on capital as deduction is that the LLP agreement must specially and unambiguously have clauses that allow for payment of remuneration and interest on capital and loan provided by the partners.

3.2.2 LLP as Startups

One of the areas where the company scored over the LLP was that the LLP was not an eligible entity for claiming tax incentives (100% deduction for 3 years) offered to start-ups as provided by the draft Finance Bill, 2016. However, the Finance Act, 2016 has eliminated this disparity by extending this benefit to LLPs. Thus, where start-ups do not intend to raise funds from public, LLP seems the way to go at least for the initial setup.

3.2.3 Service Tax Aspects

For the purpose of Service tax, LLP will be treated as partnership firm. Service Tax

Rules, 1994 has been amended by the Service Tax (Amendment) Rules, 2012 to consider LLP as a partnership firm.

3.2.4 Sales Tax / VAT Aspects

Under Sales tax, LLP is treated as body corporate. The definition of 'Dealer' under Central Sales Tax, 1956 includes body corporate also.

3.3 Audit Requirement for LLP

Every LLP is required to maintain books of accounts. However, LLP is required to have its accounts audited by a practicing Chartered Accountant if:

- its annual turnover, in any financial year exceeds Rs.40 lakhs or
- its contribution exceeds Rs.25 lakhs.

In addition to above if total turnover or gross receipts of LLP exceeds Rs.1 crore during financial year, it shall be subject to mandatory tax audit u/s 44AB of Income Tax Act, 1961 by a Chartered Accountant.



4.1 Procedure for Incorporation of LLP in India

The following chart shows the procedure for incorporation of LLP in India.



4.2 Conversion of Existing Firms, Companies to LLP

Conversion of a firm, private limited company, unlisted public company to an LLP is governed by the Second, Third and Fourth Schedule of the LLP Act respectively.

Clause 3 of Schedule III & IV states that a private company/ unlisted public company may convert itself to LLP if and only if:

- There is no security interest in its assets subsisting or in force at the time of application; and
- The partners of the LLP shall comprise only of the shareholders of the Company.

Conversion of a general partnership firm into an LLP is tax-neutral if the rights and obligations of the partners remain the same after conversion and if there is no transfer of any asset or liability after conversion and that of a private limited company subject to certain conditions which, among other things, includes a condition that the company's gross receipts/ turnover in any of the last 3 years did not exceed Rs. 60 lakhs, the value of the total assets in the books of account in any of the last 3 years did not exceed Rs. 5 crores.

4.3 Conversion of LLP to Company

Conversion of an LLP is not provided under the LLP Act. However, enabling provisions are provided in the Companies Act, 2013 under section 366 to 374 which talks about companies capable of being registered and includes any:

- Partnership firm,
- **Limited Liability Partnership,**
- Cooperative society
- Society or any other business entity formed under any other law for the time being in force which applies for registration under PART I of Chapter XXI of the Companies Act, 2013.

As per sub-section (2) of section 366 of the Companies Act, an LLP must have **at least seven members** to convert itself into a company.



- Q1** What is the treatment for Stamp duty issues, both in terms of original incorporation and conversion from other business structures? Would there be any stamp duty exemption in case of conversion?
- A1** Since Stamp duty is the subject reserved for the States, the LLP Act does not contain any provision for treatment of stamp duty issues. The Stamp duty payable will depend upon the relevant Stamp Act prescribed by the State Government / Union Territory.
- Q2** Can I comply with the requirement of two designated partner by appointing myself as a designated partner in individual capacity as well as nominee of body corporate?
- A2** No, appointment of at least two 'Designated Partners' shall be mandatory for all LLPs. Every LLP shall be required to have at least two Designated Partners who shall be individuals and at least one of the Designated Partner shall be a resident of India. In case of an LLP 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 LLP or nominees of such bodies corporate shall act as designated partners.
- Q3** Is it mandatory to file and get registered the partnership agreement under LLP?
- A3** Yes, it mandatory to execute and file LLP agreement in view of Section 2(0) & (q), 22 and 23 of the LLP Act. As per provisions of the LLP Act, in the absence of agreement as to any matter, the mutual rights and liabilities shall be as provided for under First Schedule to the Act. Therefore, in case any LLP proposes to exclude provisions/requirements of First Schedule to the Act, it would have to enter into an LLP Agreement, specifically excluding applicability of any or all paragraphs of First Schedule.
- Q4** Whether a foreign LLP can establish a place of business in India?
- A4** Under the LLP Act, a foreign LLP can establish a place of business in India by filing the prescribed Form giving the particulars of incorporation of foreign LLP, details

of DPs/ partners of that foreign LLP and details of at least two authorized representatives for complying with the regulations of the LLP Act. However, it must be pointed out that the FEMA regulations permit foreign entities to establish place of business in India only for specified purposes and following specified procedures.

Q5 Can LLP give any other address (besides its registered office) for the purpose of receiving communication from Registrar?

A5 It has been provided in the Act that a document may be served on an LLP or a partner or designated partner by sending it by post or by any other mode (to be prescribed under Rules) at the registered office and any other address specifically declared by the LLP for the purpose in such form and manner as may be prescribed (in the rules). Thus, an LLP shall have option to declare one more address within the jurisdiction of same ROC (other than the registered office) for getting statutory notices/letters etc. from Registrar.

Q6 Can a listed Company be converted to LLP?

A6 No, only private / unlisted public company can be converted into LLP.

Q7 Whether a partner would be able to give loan to or transact other commercial transactions with LLP? What will be his rights and regards in this regard?

A7 A partner may lend money to and transact other business with the LLP and shall have the same rights and obligations with respect to the loan or other transactions as a person who is not a partner.

Q8 Whether provisions of the Companies Act, 2013 / 1956 would be applicable to LLPs?

A8 Since LLP shall be in the form of a body corporate, it is proposed that to address various situations applicable to LLPs as such, the relevant provisions of the Companies Act, 2013/ 1956 may be made applicable to LLPs at any time in the future by notification by Central Government, with such changes or modifications as appropriate. However, at present no such notification has been issued.

- Q9** Whether LLP would be able to convert itself into Company under the Companies Act, 2013/1956?
- A9** This would not be allowed under LLP Act. However, enabling provisions are provided in the Companies Act, 2013 vide sections 366 – 374 and the Companies (Authorised to Register) Rules, 2014.
- Q10** Whether an entity which has objectives like "charitable or other not for profit objectives" would be able to set up under LLP Act?
- A10** No. The essential requirement for setting LLP is 'carrying on a lawful business with a view to profit'.
- Q11** Whether offences would be compounded under the LLP Act? Whether any protection to whistle-blowers is being proposed in the Act?
- A11** The Act contains provisions empowering Central Government to compound any offence punishable with fine only by collecting a sum not exceeding the amount of maximum fine prescribed for the offence. Enabling provisions have also been made in the Act in respect of protection to 'Whistle Blowers'.



General Circular No. 13/2013

Subject: Whether Hindu Undivided Family (HUF) /its Karta can become partner/ Designated Partner (DP) in Limited Liability Partnership (LLP)

It has come to the notice of the Ministry that some Hindu Undivided Families (HUFs)/ Karats of such families are applying to become partner/ Designated partner (DP) in LLPs and a question has arisen whether a 'HUF' or a karta can be allowed to do so. The matter has been examined in consultation with Ministry of Law.

As per section 5 of LLP Act, 2008 only an individual or body corporate may be a partner in LLP. HUF cannot be treated as a body corporate for the purposes of LLP Act, 2008. Therefore, a HUF or its karta cannot become designated partner in LLP.

General circular No 37/2014

Subject: Clarification with regard to Trust/ trustee as a partner in the Limited Liability Partnerships (LLPs).

Clarifications have been sought on whether a trust or a trustee representing a trust in the case of 'Real Estate Investment Trust' (REIT) or 'Infrastructure Investment Trust' (InvITs) or such other trusts set up under the regulations prescribed under the Securities & Exchange Board of India Act, 1992, can become a partner in an LLP.

The matter has been examined in consultation with the Law Ministry and it is clarified that for the purpose of these trusts it is not barred for a trustee, being a body corporate, to hold partnership in an LLP in its name without the addition of the statement that it is a trustee.

Notification No.FEMA.362/2016–RB

Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2016

In Schedule 9,

(i) the existing paragraph 4 shall be amended as under, namely:

“4. Entry Route

FDI in LLPs is permitted, subject to the following conditions:

- i. FDI is permitted under the automatic route in LLPs operating in sectors/activities where 100% FDI is allowed through the automatic route and there are no FDI linked performance conditions.
- ii. An Indian company or an LLP, having foreign investment, will be permitted to make downstream investment in another company or LLP engaged in sectors in which 100% FDI is allowed under the automatic route and there are no FDI-linked performance conditions. Onus shall be on the Indian company/ LLP accepting downstream investment to ensure compliance with the above conditions.
- iii. FDI in LLP is subject to the compliance of the conditions of LLP Act, 2008.”

THE FIRST SCHEDULE **[See section 23(4)]**

Provisions regarding matters relating to mutual rights and duties of partners and limited liability partnership and its partners applicable in the absence of any agreement on such matters

1. The mutual rights and duties of the partners and the mutual rights and duties of the limited liability partnership and its partners shall be determined, subject to the terms of any limited liability partnership agreement or in the absence of any such agreement on any matter, by the provisions in this Schedule.
2. All the partners of a limited liability partnership are entitled to share equally in the capital, profits and losses of the limited liability partnership.
3. The limited liability partnership shall indemnify each partner in respect of payments made and personal liabilities incurred by him
 - a. in the ordinary and proper conduct of the business of the limited liability partnership; or
 - b. in or about anything necessarily done for the preservation of the business or property of the limited liability partnership.
4. Every partner shall indemnify the limited liability partnership for any loss caused to it by his fraud in the conduct of the business of the limited liability partnership.
5. Every partner may take part in the management of the limited liability partnership.
6. No partner shall be entitled to remuneration for acting in the business or management of the limited liability partnership.
7. No person may be introduced as a partner without the consent of all the existing partners.

8. Any matter or issue relating to the limited liability partnership shall be decided by a resolution passed by a majority in number of the partners, and for this purpose, each partner shall have one vote. However, no change may be made in the nature of business of the limited liability partnership without the consent of all the partners.
9. Every limited liability partnership shall ensure that decisions taken by it are recorded in the minutes within thirty days of taking such decisions and are kept and maintained at the registered office of the limited liability partnership.
10. Each partner shall render true accounts and full information of all things affecting the limited liability partnership to any partner or his legal representatives.
11. If a partner, without the consent of the limited liability partnership, carries on any business of the same nature as and competing with the limited liability partnership, he must account for and pay over to the limited liability partnership all profits made by him in that business.
12. Every partner shall account to the limited liability partnership for any benefit derived by him without the consent of the limited liability partnership from any transaction concerning the limited liability partnership, or from any use by him of the property, name or any business connection of the limited liability partnership.
13. No majority of the partners can expel any partner unless a power to do so has been conferred by express agreement between the partners.
14. All disputes between the partners arising out of the limited liability partnership agreement which cannot be resolved in terms of such agreement shall be referred for arbitration as per the provisions of the Arbitration and Conciliation Act, 1996.



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Ichhapore-2
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