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## Limited Liability Partnership as a Better Alternative to Incorporation

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*While the Partnership Act, 1932, lays responsibility on the partner, the more specific Companies Act of 1956 demands that businesses' management is penalised for not complying with requirements. A new form of business entity, limited liability partnership (LLP), was created by the passage of the Limited Liability Partnership Act 2008, which was made public on March 31, 2009. Because of the attractive advantages of business flexibility, limited liability, and the independent legal identity of a corporation, SMEs, professional services, and small companies have experienced a significant increase in popularity. This is why in a breakdown of the process of forming an LLP, we see the method for converting an LLP from a partnership or a corporation, the wind-up of an LLP, and the fiscal procedure of LLPs. After examining the results of the LLP Law in 2008, the study concentrates on the ways in which SMEs benefit from LLP as a corporate structure. The paper will also point out the moral and ethical concerns surrounding the Act, as well as issues that LLPs (Limited Liability Partners) face in the form of case studies and industry experts.*

*An LLP is a breath of fresh air when it comes to corporate law. The LLP is sometimes described as an “alternate corporate vehicle” that is similar to a partnership and a corporation; it is intended to get the main benefits of both organisational structures. By allowing LLP members to organise their internal management structure as a partnership, in which members agree to divide the profits and burdens equitably, and restricting the liability of partners to their partnership share corresponding to the legal identity of the company, this can be achieved.*

**Keywords:** *SMEs, limited liability partnership, partnership, company,*

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## INTRODUCTION

LLPs have been on the rise for some time now. The number of Limited Liability Partnerships (LLPs) being formed has been rising steadily, and this shift towards converting classic unlimited partnerships into Limited Liability Partnerships (LLPs) has become increasingly common in the global scene. A thorough understanding of the structure of the LLP is essential in order to identify which is the best type of business entity, namely, an incorporated business. A Limited Liability Partnership (LLP) is observed as an alternative corporate vehicle that gives limited liability and allows for flexible internal organisation, although it is generally recognised as being utilised mostly by business entities to form partnerships of their own will. Aside from being able to offer any sort of service, the LLP Establish also allows businesses to build market-efficient vehicles that best meet their demands.

Incorporation will be a type of company different from a joint stock company and a partnership created under the Partnership Act of 1932 and the laws enacted by the government of the State of California. LLPs are thus established under the 2007 Limited Liability Partnership Act which, coupled with organisational flexibility and non-compromising transparency standards, offers the entrepreneurs, the benefit of a separate legal entity. In that sense, it also provides "for the formation and regulation of limited liability companies" in India, which establishes the legal basis and has some aspects of a sui generis nature for this company's hybrid and traditional partnership.

Moreover, small and medium enterprises search for a risk-free business vehicle, and LLPs are brought in nations like the United States, United Kingdom, and Singapore. While reiterating the importance of entrepreneurs in establishing the LLP concept in India, the Ministry of Corporate Affairs underscored the significance of entrepreneurs in launching the concept in the country. The Ministry of Industry thought that in order for a business, expertise, and risk

capital to mix and further increase India's economic growth, the LLP structure needed to be established in the country.

The Act in this chapter has an overview of LLPs in the United States, United Kingdom, Singapore, and India, whereas Chapter II contains the whole history of LLPs in the four countries. It examines the distinction between a Limited Liability Partnership (LLP) and a partner business, and it does so comprehensively, going into the features of the LLP. The detailed analysis of the integration, conversion, taxation and wind-down procedure for LLPs is covered in Chapter III. This chapter also looks at the numerous implications of the LLP Act on business. Chapter IV focuses on how the LLP Act and LLP model assist small and medium-sized businesses and entrepreneurs in India. Chapter V looks at the overall impact of the LLP Act on small and medium-sized businesses and organizations, which includes the most

A corporation is a separate legal entity, apart from its stockholders. An affiliation of people for a common goal without any specific legal or technical definition. You will need to go through the registration process to form a separate legal organisation. Shareholders have different rights and obligations from those of the company.

### **FORMATION OF AN LLP**

Registration shall include an LLP. The LLP incorporation process is fully online and documents are submitted via the government website to the Registrar of companies itself. This is a good initiative by the government in facilitating registration and in supporting the business with the use of contemporary techniques. However, a previous step for incorporating an LLP is to make the LLP profit-oriented. Thus a number of people, persons or companies, In trying to be associated for charitable purposes with each other, a charitable trust or a Section 25 business could better be formed, as the Registries would be permitted to refuse registration for profit-wishing objectives, given the competence of registering LLPs, which is its primary function.

The designated partners must be at least two partners for the eligibility for incorporation, although more than two may be qualified for incorporation. The maximum number of partners in an LLP is not limited. The designated partners shall ensure that the LLP is legally complied with. In addition, they have a paper called the 'incorporation document' to subscribe to their names. This document is similar to an association memorandum that must be filed in accordance with Company Act, 1956.

The "Designated Partner Identification Number" (DPINs) would then be required by all designated partners to be obtained, on lines similar to the DIN required by the directors of the businesses. All the information and updates made by all designated partners must be submitted to the Registrar. The procedural criteria establishing an LLP are in line with the procedure in the Business Act to incorporate a registered company. There are two popular LLP taxation models, the French model, and the UK and Singapore LLP, which are employed in numerous jurisdictions abroad. In the French model, the LLP is considered as an entity with fiscal transparency, and only partner income is taxed and not a transparent entity.<sup>1</sup> Whereas LLP models in the UK and Singapore should treat an LLP as a partnership in a similar way.

India has chosen the LLP approach of the United Kingdom and Singapore, i.e. treatment of the LLP with a general partnership in taxation. Under Section 2(23)(i) of the Revenue Tax Act, 1961<sup>2</sup>, a separate taxable entity shall be considered as LLP. The LLPs would apply mutatis mutandis to all taxes provisions of the general partnership enterprises. The individual LLP members are classified as tax self-employed and taxed on the LLP's profits in line with their profit share entitlements.<sup>3</sup>

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<sup>1</sup> Nivedita Sen & Neha Mathen 'Decoding The New Business Vehicle of India: The Limited Liability Partnership' (2011) 4 NUJS Law review <<http://nujlawreview.org/2016/12/03/decoding-the-new-business-vehicle-of-india-the-limited-liability-partnership/>> accessed 12 July 2021

<sup>2</sup> Income Tax Act 1961, s 2(23)(i)

<sup>3</sup> 'Structuring a Business as a Limited Liability Partnership (LLP)' (*Macfarlanes.com*, 2014) <[https://www.macfarlanes.com/media/1723/structuring-a-business-as-a-limited-liability-partnership\\_july-14.pdf](https://www.macfarlanes.com/media/1723/structuring-a-business-as-a-limited-liability-partnership_july-14.pdf)> accessed 12 July 2021

The revenue tax would be paid on LLP profit and those profits in the hands of the LLP itself would be taxable. In accordance with Section 10 of the Income Tax Act, 1961<sup>4</sup>, Partners would not be included in the calculation of the total income of partners payable to tax. The revenue tax would be paid on LLP profit and those profits in the hands of the LLP itself would be taxable. In accordance with Section 10 of the Income Tax Act, 1961<sup>7</sup>, Partners would not be included in the calculation of the total income of partners payable to tax. Partner remuneration shall be taxed as the "Business income and professional income" that is within the scope of a computer income "deduction." If Section 184 of the LLP Act fails to comply, the compensation paid to partners in 2008<sup>5</sup> is not permitted as personal income deductions<sup>6</sup>. The National Industrial Contributions (NIC) is substantially decreased in respect of individual members' pay (profit shares) compared to employees' salaries. Provided they have independent status, their salary does not involve the employer's NIC liabilities<sup>7</sup>.

Some further tax benefits available to LLPs, such as some company tax exemptions, are presumptive tax, dividend distribution tax, or minimum alternative tax<sup>8</sup>. Since LLPs are considered equal to the general partnership, they would not be responsible for the distribution tax on dividends and the minimum alternative tax. In addition, the 2009-2010 Budget also wiped down the corporate tax surcharge. Furthermore, the LLP would still be subject to taxation at 30% more relevant cess<sup>9</sup> when it is a non-resident under the IT Act 2000 (its control management is totally outside India).

## **CONVERSION, INCORPORATION, ARRANGEMENT, RECONSTRUCTION, AND WINDING UP ISSUES FOR AN LLP**

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<sup>4</sup> Information Technology Act 2000, s 10

<sup>5</sup> Limited Liability Partnership Act 2008, s 184

<sup>6</sup> Information Technology Act 2000, s 184

<sup>7</sup> Structuring a Business (n 3)

<sup>8</sup> Information Technology Act 2000, s 10(2-A) & s 28(v)

<sup>9</sup> Sharmendra Chaudhry, 'Limited Liability Partnership in India' [2010] SSRN Electronic Journal

<[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1708215](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1708215)> accessed 13 July 2021

Registration shall be used to incorporate an LLP. Electronic means are used to simply and efficiently add an LLP without submitting documentation in a time-saving way. The procedural criteria establishing an LLP are in line with the procedure in the Business Act to incorporate a registered company. In the event of an LLP, the company's "association memorandum" was replaced by the "incorporation deed." The procedure of creating an LLP essentially comparable to that of companies guaranteed that a mechanism for the establishment of a new business vehicle that has already passed the test of time was applied, therefore isolating LLPs away from the risk of new paper flawless practical challenges. In conformity with the rules established by the central government, the LLP Act allows a foreign LLP to register a place of establishment in India. This provision is a praiseworthy endeavour for attracting foreign investment directly and providing global corporate concerns with chances that allow the Indian economy and GDP to take advantage of thriving operations. However, a lack of clarity in the law leads to certain disparities.

A foreign LLP conducting business in India would undoubtedly exert control over the administration of its activities in India, given that it is based in the nation. The Income Tax Act, 1961, dictates that an individual that resides in India shall be taxed as a resident. In other words, the global revenue of a foreign LLP (a law firm located outside of India) in a financial year would be taxed in India. Thus, international LLPs must be taxed under different laws. In addition, there is disagreement on whether the numbers used for statutory audit compliance should be just India intense or worldwide. The third risk of establishing a foreign-incorporated limited liability partnership (LLP) in India is that, due to India not having incorporation laws, the same name can be used by two or more separate LLCs in India. Recognizing these drawbacks, the legislation concerning foreign limited liability companies must be examined and rewritten to eliminate current loopholes.

Many current general partnership firms, private limited companies, and unlisted public companies may be able to reorganise as a limited liability company if they want to go through the process of reorganisation using the Limited Liability Company Act. A sole proprietorship, society, or trust cannot change into a corporation, however, they can convert into an LLC. "A

conversion of the property, assets, interests, rights, privileges, liabilities, obligations, and undertaking of the firm/private limited company/unlisted public company takes place when the limited liability partnership transfers the property, assets, interests, rights, privileges, liabilities, obligations, and undertaking of the firm/private limited company/unlisted public company to the limited liability partnership.”

It is important to notice from this definition that, in accordance with the Revenue Tax Act of 1961, the profits and gains from the transfer of capital assets are taxed. It appears, then, that the conversion of assets and liabilities into an LLP is the transfer of the transferor share/private Limited Corporation/unlisted corporation to the transferor partner LLP. However, it is argued that the only transmission or appropriation between two entities is not transferred. The High Court of Bombay decided that a partner firm that converts itself into a limited company is not a transfer because there are no transactions between a party and a counterpart or any division of the assets involved, but just a transaction between the parties and the counterparties. Similarly, transferring into LLP will not, irrespective of the meaning of 'convert,' be for tax purposes. The Finance Act, 2010 adopted this viewpoint and specifies that the conversion into an LLP has no tax consequences.

To convert to an LLP, a partnership should give information on its registration. You don't have to register a partnership, but it is an option. A partnership may not be registered even after a complete application has been filed. So, an unregistered partnership that is not permitted to change into an LLP is held back in an efficient manner. Despite the absence of some provisions, the biggest problem with this issue is the failure to convert an LLP into different business entities like a corporation and a partnership. This means that, to this day, an LLP must be a law firm for the entirety of its life until it dissolves, and only then may the partners establish a partnership or corporation based on the LLP's precious and previous assets. Today, mergers and acquisitions are an everyday event for companies, and this is due to the existence of a thorough regulatory framework that regulates the practise. Compromise, agreement or rebuilding has also been defined as a procedure in chapter XII of the LLP Act. Because of the compromise, more investigation of the LLP agreement is necessary.

## CONCLUSION

An LLP protects its partners, while simultaneously retaining all the partnership's advantages. The Limited Liability Partnership must register under the Limited Liability Act, 2008, which may be difficult. To me, it appears as though the balance is weighted against lattes. The law on partnership has been around for some time, and the legislation governing partnerships has been set down in statute books for over a century, but, modern-day partnership features can have some significant downsides. When seen through the lens of the law, Collaboration is just a term used to describe an individual's partnership. The extraordinary global financial crisis that began this year is exacerbating problems for many countries, including our own. Having LLP as an alternate vehicle for our trade and industry would be a very essential step in this type of scenario. Over half of our GDP is made up of the service industry in India, which has risen rapidly in recent years. We expect that LLPs will have a significant impact on the future expansion of service sectors.

Following the conclusion, it can be deduced that the firms' action has changed several times over the years. As the days go by, businesses are coming together with social responsibility. Corporate law in India has improved, and as a result, it is now excellent for the country's businesses; the country is very fortunate that the new wide-ranging Companies Act 2013 was instituted. But these areas of a community still need to be highlighted. That is required under schedule VI of the Company Act 2013. The most well-known phase in the company act is the rules on section 8 businesses since no legislation can be of use unless it is executed with full power. Since the implementation of the Company Act 2013, there have been some of the previous ambiguities in the Company Act 1956 dealt with, but there are possibly still some loopholes in the new legislation, mainly because CSR has become a requirement in India and this may cause industrialists to treat it as tax, which could affect those firms that are enthusiastic about CSR. It might potentially be a loophole in Section 8 company policy. In order to ensure the Act's long-term effectiveness, there is a need to revisit some elements of it.