

Limited Liability Partnership Act, 2008 - Genesis and Comparison

By Asmita Gupta

Law Lecturer

R.A. Podar College of Commerce and Economics

Genesis

- Concept emerged in US in 1980's. Suffered from real estate and energy price crisis during which signing lawyer/ accountant firm held liable.
- Partners not involved in advising also liable on account of personal assets.
- The State of Texas , US enacted the first LLP law in 1991. However, Texas model exempts only from vicarious liability on account of co-partner's negligence, incompetence, omission etc.
- The structure of LLPs varies from State to State in US, Delaware being the most expansive. Covers all liabilities – in tort, contract or otherwise.

Genesis

- UK - initially allowed accounting firm to work as LLC – later passed UK LLP Act in 2000, based on limited liability, corporate personality but partnership flexibility.
- Singapore passed the LLP Act in 2005.
- LLP Act passed in India by both houses of Parliament in 2008 based on the recommendations of J.J. Irani Committee. From April 1, 2009 - LLP Act, 2008 and LLP Rules, 2009 came into effect.
- LLP is a hybrid structure with features of both company and traditional partnership. It enables professional expertise & entrepreneurial initiatives to combine

Differences

	Limited Liability Partnership	Partnership Firm	Company
Governing Law	The Limited Liability Partnership Act 2008	The Indian Partnership Act 1932	The Companies Act, 1956 and Companies Act, 2013
Incorporation Document	Limited Liability Partnership Agreement or Schedule I of LLP Act	Partnership Deed (optional)	Memorandum and Articles of Association (compulsory)
Common Seal	Optional	No Common Seal	Compulsory

LLP vs. Company...

	Limited Liability Partnership	Private Limited Company
Incorporation and change of Registered Office	Allowed – Minimum formalities + cost effective	Allowed – Lot of formalities to be followed
No of Members – Minimum/ Maximum	Minimum – 2 Maximum – 10/20/100	Minimum – 2 Maximum – 50/200
Management	By Designated Partners and more flexible	By Board of Directors and statutory provisions of number of meetings, quorum etc to be followed
Maintenance of Accounts and Audit	Accounts required to be maintained, audit if turnover exceeds INR 40 lakhs	Compulsory maintenance of accounts and audit

...LLP vs. Company

	Limited Liability Partnership & Partnership Firm	Private Limited Company
Interest on capital contribution	Allowed	Not allowed
Management remuneration	Allowed. No restrictions	Allowed subject to limits and disclosure
Taxability of Distribution of Profits	No tax to be paid by the LLP on distribution.	Dividend Distribution Tax (DDT ') applicable
Non-Profit Organization	Not Allowed (must carry on 'business')	Allowed

LLP vs. Partnership...

	LLP	Partnership Firm
Separate Legal Entity	Yes, formed as a body corporate	No
Perpetual existence	Yes. Subject to dissolution and winding up	No
Liability of Participants	Limited to capital contribution except fraud	Unlimited in all cases
Admission of Minor as participant	Minor can not be partner	Minor can be admitted to benefits of the partnership

...LLP vs. Partnership

	Limited Liability Partnership & Private Company	Partnership Firm
Registration Formalities	Compulsory	Not compulsory
Regulated by	Registrar of Companies	Registrar of Firms
Relationship	Partners are agent of LLP but not of other partners	Mutual agency
Transfer of Interest	Governed by LLP Agreement	Generally not permissible except with consent of all

Thank You !