

Meaning of Limited Liability Partnership (LLP)

LLP is a Limited Liability Partnership is a corporate business vehicle that provides the benefits of limited liability of a company to its members and also allows to manage their internal management on the basis of mutually arrived agreement as in case of a partnership firm. Partners have lower liabilities to any debt which may arise in future in running the business. It contains elements of both 'a corporate structure' as well as 'a partnership firm structure' and is called a hybrid between a company and a partnership. The Partners are required to contribute towards the LLP as specified in the LLP Agreement. Their share can be in any form i.e. tangible or intangible, movable or immovable property, monies and cash.

In terms of liability under Limited Liability Partnership the Company is liable for losses or debts incurred in running the business where the individual members of the LLP shall not be liable for such losses or debts.

Example

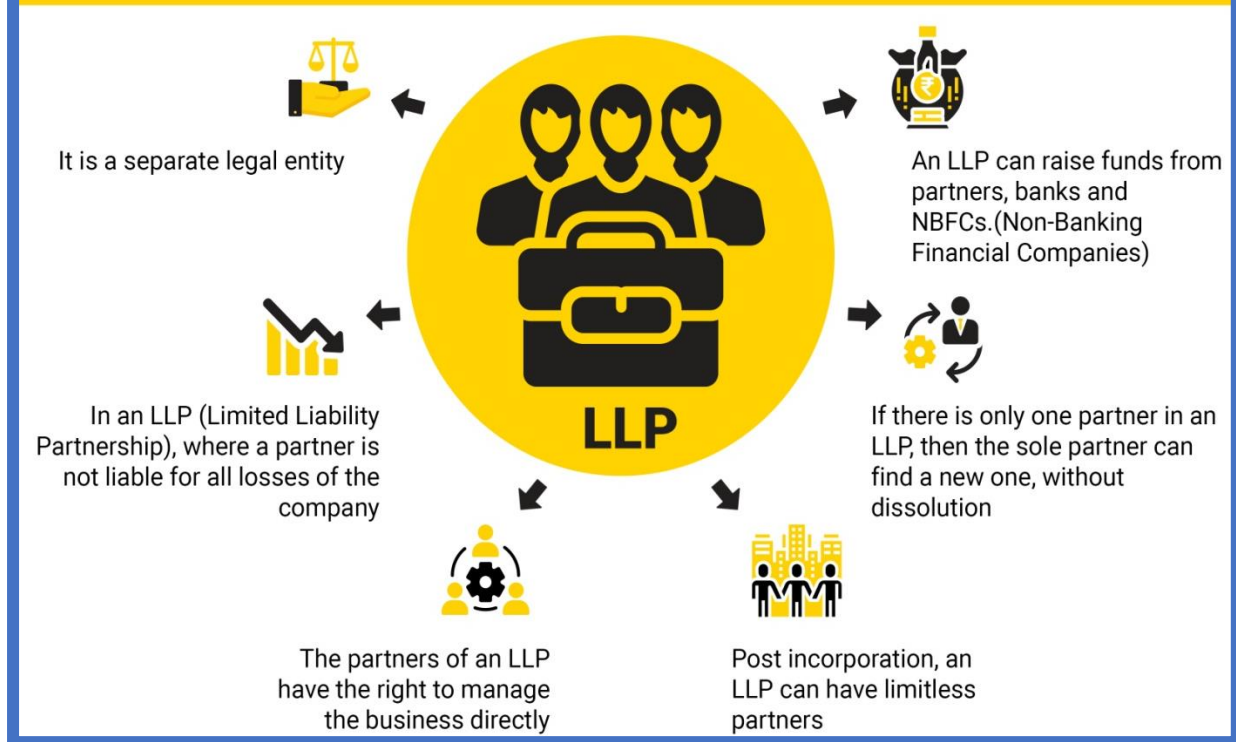
ABZ LLP has 2 partners X and Y, ABZ takes a loan of Rs.20 lakhs and is unable to repay the loan. Its capital is Rs. 10 lakhs where X is supposed to contribute Rs. 6 lakhs and Y Rs. 4 lakhs but both the partners contribute Rs. 5 lakhs as X contributed Rs. 3 lakhs and Y contributed Rs. 2 lakhs. In such a case LLP will be liable for up to the amount of Capital i.e. Rs. 10 lakhs and X and Y will be liable for Rs. 5 lakhs as per their share of contribution. The Creditors cannot recover more amounts, if such amount is insufficient to clear the debts of the LLP.

Salient Features of Limited Liability Partnership

- **LLP is a body corporate:** According to Section 3 of the Limited Liability Partnership Act 2008 (LLP Act), an LLP is a body corporate, formed and incorporated under the Act. It is a legal entity separate from its partners.
- **Perpetual Succession:** Unlike a general partnership firm, a limited liability partnership can continue its existence even after the retirement, insanity, insolvency or even death of one or more partners. Further, it can enter into contracts and hold property in its name.
- **Separate Legal Entity:** Just like a corporation or a company, it is a separate legal body. Further, it is completely liable for its assets. Also, the liability of the partners has certain limitations in their contribution to the LLP. Hence, the creditors of the LLP are not the creditors of individual partners.

- **LLP Agreement:** An agreement between all partners governs the rights and duties of all the partners. Also, the partners can devise the agreement as per their choice. If such an agreement is not made, then the Act governs the mutual rights and duties of all partners.
- **Artificial Legal Person:** For all legal purposes, LLP is an artificial legal person. A legal process creates it and has all the rights of an individual. It is invisible, intangible, and immortal but not fictitious since it exists.
- **Common Seal:** If the partners decide, the LLP can have a common seal [Section 14(c)]. It is not mandatory though. However, if it decides to have a seal, then it is necessary that the seal remains under the custody of a responsible official. Further, the common seal can be affixed only in the presence of at least two designated partners of the LLP.
- **Limited Liability:** According to Section 26 of the Act, every partner is an agent of the LLP for the purpose of the business of the entity. However, he is not an agent of other partners. Further, the liability of each partner has limitations to his agreed contribution to the LLP. It provides personal liability protection to its partners.
- **Minimum and Maximum Number of Partners in an LLP:** Every Limited Liability Partnerships must have at least two partners and at least two individuals as designated partners. At any time, at least one designated partner should be resident in India. There is no maximum limit on the number of maximum partners in the entity.
- **Business Management and Business Structure:** The partners of the LLP can manage their business. However, only the designated partners are responsible for legal compliances.
- **Business for Profit Only:** Limited Liability Partnerships cannot be formed for charitable or non-profit purposes. It is essential that the entity is formed to carry on a lawful business with a view to earning a profit.
- **Investigation:** The power to investigate the affairs of an LLP resides with the Central Government. Further, they can appoint a competent authority for the same.
- **Mutual Agency:** Another difference between an LLP and a partnership firm is that independent or unauthorized actions of one partner do not make the other partners liable. All partners are agents of the LLP and the actions of one partner do not bind the others.

Advantages of Limited Liability Partnership



Disadvantages of LLP

i) Lack of Secrecy: Public disclosure is the main disadvantage of an LLP. The documents filed through the MCA portal are public documents. Any person can pay a small fee of **INR 50** and can get a copy of LLP's incorporation documents (but not LLP agreement), financial statements etc. This is not an issue in the case of sole proprietorship or traditional partnership firm, where documents and financials are not available for public inspection.

ii) Limited Funding Alternatives: LLPs have limited alternatives when it comes to raising funds. LLPs can either borrow debt from financial institutions or via a loan from partners.

Also, Foreign Direct Investment (FDI) in LLP is more restrictive as compared to companies. Neither an LLP can issue Employee Stock Options (ESOP).

For these reasons, LLP is **not** the most ideal choice for startups who want to hyper-grow, seek seed or venture capital funding, or issue shares to their employees.

iii) Penalty for non compliance: Though the compliance requirements for an LLP would be minimal, it is essential to adhere to them, else it can lead to heavy penalties. Even if an LLP does not have any activity, Form 8 and Form 11 are required to be filed annually. In case of non-compliance, an additional fee of INR 100 per day, per form is applicable. There is no cap

on the additional fee, and it could run into lakhs if an LLP has not filed them for a few years. Also, the LLP and its DPs would be liable for a fine that can extend up to INR 5 Lakhs!

In the case of a proprietorship or traditional partnership firm, there is no requirement for filing annual forms and business need not bear non-compliance expenses.

iv) **Penalty for improper use of words** “Limited Liability Partnership”: Punishable with fine which shall not be less than Rs. 50,000 but which may extend to Rs. 5,00,000.

v) **Penalty for filing false incorporation Document**: Punishable with imprisonment for a term which may extend to 2 years and with a fine which shall not be less than Rs.10,000 but which may extend to Rs. 5,00,000.

Pre-requisites for Incorporating a LLP

- Minimum two partners (Individual or body corporate).
- Minimum two designated partners who are individuals and at least one of them should be resident in India.
- Digital signature certificate
- LLP Name
- LLP Agreement
- Registered office

Incorporation of LLP:

- **Procure Digital Signature Certificate:**

Every form or application is filed online with the MCA, which requires to be signed digitally by the applicants and partners of the LLP. Therefore, the DSC with validity of 2 years is procured for the Designated Partners of the Limited Liability Partnership. The DSC is associated with the PAN card of the application. It further requires passport size photograph and address proof.

- **Reserve LLP Name:**

The new process requires the applicants to file the web form named RUN-LLP (Reserve Unique Name – Limited Liability Partnership). The similar web form – RUN is already deployed to secure company’s name. RUN-LLP has replaced the old form LLP Form 1. The new form has been simplified that requires information related to the desired name, its significance and other basic details.

The application can be made with maximum 2 names in preference order providing their significance. The names must comply with the applicable provisions for name reservation. If none of the names is approved by the MCA, another chance is provided to apply two more names.

The government fees for RUN, as per Register Office Fees Rules, shall be Rs 1,000. DSC and DIN are not required for filing of RUN form for reservation of name but account of MCA portal is mandatory. Once the name is allotted for LLP, it is reserved for a period of 90 days from date of approval.

- **Preparation of Documents for Incorporation of LLP**

After approval of name, LLP applicant is required to prepare the following documents:

1.
 1. Proof of office address (Conveyance/Lease Deed/Rent Agreement etc. along with rent receipts)
 2. NOC from owner of the property
 3. Copy of utility bills (not older than 2 months)
 4. Subscription sheet including consent
 5. In case, a designated partner does not have a DIN, it is mandatory to attach: Proof of identity and residential address of the subscribers
 6. All the DPs should have digital signature
 7. Detail of LLP(s) and/or Company(s) in which partner or designated partner is a director/partner
 8. Copy of approval in case the proposed name contains any word(s) or expression(s) which requires approval from Central Government.

- **LLP Incorporation and DIN Application**

The major change in the new process is this step and application. Earlier, the incorporation application was supposed to be filed in LLP form 2, which is now replaced with **FiLLiP (Form for incorporation of Limited Liability Partnership)**. The most significant part is integration of DIN Allotment Application with incorporation application. Below mentioned are the features of the application:

1.
 1. DPIN/DIN application for maximum 2 Designated Partners (DPs) can be made under the application. If there are more than 2 DPs who do not hold DIN, they can be added later by following respective filings.
 2. With this form, the application for name reservation can also be made. However, that is kept at the option of the applicants. The applicants can either choose to reserve name through LLP-RUN or under this form.

The application is accompanied with required documents including the subscriber's sheet and registered office address proof. The e-form will be attested by the partners through PAN based DSC and certified by the practising professional (CA/CS/CWA).

The application will be processed for approval by Central Registration Centre (CRC). If the registrar finds it necessary to call for further documents or information, he may do so

by directing for re-submission within 15 days. Another opportunity of re-submission maybe provided after re-examination of application, which again has 15 days period. It is provided that the total period for re-submission of documents shall not exceed 20 days in total.

Upon approval of the application made for LLP registration online, the Certificate of Incorporation (CoI) will be issued in form 16 along with DPIN/DIN allotted to the Designated Partners. Certificate of Incorporation will also consist of the Limited Liability Partnership Identification Number (LLPIN). The date of CoI will be the date of LLP incorporation since when it has come into legal existence. LLP is now entitled to commence business in its name.

- **Apply for PAN and TAN:**

Unlike the in case of company, the application for PAN and TAN is required to be made separately for LLP through offline or online mode. The applications are made directly to the Income Tax Department and also processed by it. The applications are made in forms 49A and 49B respectively with Certificate of Incorporation as supporting proof.

- **Drafting and Filing LLP Agreement**

The next step will be to draft LLP Agreement carefully and based on the partners' requirements.

Contents of LLP Agreement:

The name of LLP, name and address of partners and designated partners, business object, place of business and all other essential details of LLP will be placed in the Agreement. Other clauses will be form of contribution and interest on contribution, profit sharing ratio, rights and duties of partners in case of admission, resignation, retirement, cessation and expulsion, proposed business, and rules for governing the LLP.

Once the LLP Agreement is reviewed and agreed upon by the partners, it will be executed by payment of stamp duty. The agreement will be executed by payment of stamp duty, which depends on the respective State Stamp Act where the registered office of the LLP is situated. Then with signature by partners and attestation by the witnesses, the agreement will be executed.

Highlights:

- The agreement must be filed with MCA within 30 days of date of incorporation. The delay leads to penalty of Rs. 100/day till the date of actual filing.
- This is filed in LLP form-3 which remained same as was in the erstwhile process. Further, the verification and approval is processed by the concerned State ROC instead of CRC as in case of previous steps.

- The name allotted under LLP-RUN will be reserved for a period of 90 days. If the LLP registration application i.e. FiLLiP is not filed in given period, the name will be expired which can be reserved through new application.
- Only 2 DPIN/DIN can be allotted by through FiLLiP. In case, there are more than 2 DPs, the respective partners will be required to obtain DPIN/DIN by filing DIR-3 after incorporation. Then, the LLP need to carry on addition of Designated Partner or change in designation of Partner, as required.
- Conclusive Evidence: The certificate of incorporation shall be the conclusive evidence that the limited liability partnership is incorporated by the name specified therein.
- LLPIN: ROC assigns a Limited Liability Partnership Identification Number (LLPIN) for every LLP which is registered.

Effect of Registration (Section 14):

On getting the certificate of registration from the registrar of companies, the LLP enjoys the status of body corporate and becomes a legal entity separate from its members. Such LLP is entitled to exercise the following rights :

1. It can sue and be sued by others in its own name.
2. It can acquire, own, hold, develop or dispose of property whether movable or immovable, tangible or intangible.
3. It may have a common seal. Thus it is not mandatory for LLP to have a common seal.
4. It can do and suffer such other acts and things as bodies corporate may lawfully do and suffer.

Difference between Partnership and LLP

S.No	Basis	Partnership	LLP
1.	Governing Law	Partnership Act, 1932	Limited Liability Partnership Act, 2008
2.	Registration	The Registration of Partnership is not compulsory. However, the unregistered Partnership firm cannot be sued.	The Registration of LLP is compulsory with the Registrar of Companies (ROC).
3.	Liability	Every Partner is liable, jointly for the acts of other partners alone or for all the acts of the firm in course of partnership.	Under LLP the liability of partners are limited as per their share of contribution.
4.	Legal entity	Partnership firm has no separate	The LLP has a separate legal

		legal entity.	entity.
5.	Enforcement	Partnership Act provisions are different in various states as the enforcement of the act is at State level	The enforcement of LLP Act is made by the Central Government which is applicable to all States.
6.	ITR	No returns are to be filed with the Registrar of Firms	The annual statement of accounts and annual return has to be filed with ROC.
7.	Can Minor become Partner	Minor can become partner in Partnership	In LLP minors cannot become partners.