



Limited  
Liability  
Partnership  
(LLP)

# THINKING OF OPENING A “LLP” IN INDIA?

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# HIGHLIGHTS

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- ✓ **SEPARATE LEGAL ENTITY**
- ✓ **INCOME TAX @31.20% AFTER DEDUCTING PARTNERS REMUNERATION AND INTEREST IF ANY.**
- ✓ **NO TAX TO PARTNERS ON LLP 'S PROFIT SHARING – 100% EXEMPT**
- ✓ **LIBERAL RULES FOR FOREGIN CITIZENS/NRI/ INDIAN ORIGIN. IF NON-REPATRIABLE BY NRI/OCI, CONSIDER AS “DOMESTIC” INVESTMENT**
- ✓ **AS ON 31ST OCTOBER, 2021 - 2.26 LAKHS ACTIVE LLP ARE THERE**
- ✓ **FASTER INCOPORATION PROCESS BY GOVERNMENT AND COMPLETE ON-LINE PROCESS FOR MAJORITY OF LAWS AND REGULATION**



# GENERAL DESCRIPTION

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- When two or more persons want to start a business on partnership with a corporate status – they can think of opening a LLP
- Indian LLP is a separate legal entity and governed by Limited Liability Partnership Act, 2008
- Just like Partnership firm but given corporate Status like Company - hybrid combination of Partnership and Company features - Separate PAN card of LLP will be there.
- Minimum - 2 Maximum – Unlimited Partners can be there in LLP. Each Party to the LLP would be called as "Partners" and specified person as "Designated Partner" where liability of all the Partners will be "Limited" unlike general Partnership firm where all partners liability is unlimited.
- Main Document for any LLP is "LLP Deed" signed by all the Partners which covers all the matters including but not limited to Objects, rights and responsibilities of partners, profit share, capital contribution etc. just like Memorandum & Article of Association i.e. MOA & AOA in case of Company.



## BRIEF DIFFERENCE

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Sr.	Questions	Incorporated as			
		Non-Corporate Entities		Corporate Entities	
		Individual / Proprietorship	Partnership Firm	LLP	Private Limited Company
1	Nature or Definition ?	Single Person is a owner running a business - Same PAN Card of Individual no new apply	Two or More person comes together as Owner for running a business - Separate PAN card of Partnership Firm	Just like Partnership firm but given corporate Status like Company - hybrid combination of Partnership and Company features - Separate PAN card of LLP	Concept of Shareholders and Directors with Limited Liability - Separate PAN card of Company
2	Number of Owners	Sole Owner - 1	Minimum - 2 Maximum - 50	Minimum - 2 Maximum - Unlimited	Minimum - 2 Maximum - 200
3	Person who starts the entity would be called as?	Person would be called as "Proprietor"	Persons would be called as "Partners"	Persons would be called as "Partners" and specified person as "Designated Partner"	They became "shareholder" and those managing as "Director"
4	Liability is Limited or Unlimited ?	Unlimited Liability	Unlimited Liability	Limited Liability of Partners	Limited Liability of Shareholders
5	Separate Legal Entity	NA	No	Yes	Yes
6	Any Document to be prepared?	No such	Partnership Deed	LLP Deed	MOA and AOA
7	Which Act governs this	No such specific Act	Indian Partnership Act, 1932	Limited Liability Partnership Act, 2008	Companies Act, 2013
8	Income Tax	As per Slab rate	30% after Partners remuneration and Interest	30% after Partners remuneration and Interest	25%



# CORPORATE LAWS – LLP ACT, 2008

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- Statutory Audit by a Chartered Accountant in practice is compulsory only if turnover is more than Rs.40 Lakhs or contribution is more than Rs.25 Lakhs in a any financial year (i.e. April-March).
- Unlike Companies which are not allowed to borrow money from any third parties except Banks, Financial Institutions, Shareholders, Directors, Director's Relative or any other Companies etc., - There is no such restrictions in case of LLP.
- Every LLP should have minimum 2 designated partners who are individuals and at least 1 of them should be a "resident of India"
- LLP are allowed to follow either accrual or cash system of accounting. However it has to mention in the LLP Deed
- LLP can be a partner in any other LLP or it can be a Shareholder in any other Company.
- It can be closed only after 1 year of incorporation or after 1 year of closure of business which ever is later subject to other conditions.
- Various Annual filing and other changes in LLP like Partners resignation, appointment, change in profit share etc. needs to be filed with ROC (i.e. government) within due date otherwise penalty and late fees will be levied.



# **INCOME TAX ACT, 1961**

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- As per Income Tax Act, LLP are liable for 31.20% Tax on its Net Profit after deducting Partners remuneration and Interest if any.
- As per Income Tax Act, Partners are allowed to take 60% of “Book Profit” as Partners remuneration in case of Book Profit is more than Rs.3 Lakhs, otherwise Rs.1.50 Lakhs or 90% of Book profit whichever is more - for all partners together. Partners will be liable to pay Income Tax on such remuneration.
- In addition to remuneration, Partners will also be allowed to take up to 12% Interest on its Capital amount. Both remuneration and Interest are subject to LLP Deed and other conditions.
- Once LLP Pays the Income Tax on its Net Profit after deducting Partners remuneration and Interest – Profit can be shared to all the partners as per LLP Deed which is completely exempt to Partners i.e. Partners are not allowed to pay any tax on it unlike in case of Company where even after paying Income Tax if company distribute that profit as dividend to its shareholders, shareholders are liable to pay tax on it.
- All provision applicable to General Partnership firm will apply to LLP as far as Income Tax Act is concerned except non-applicability of presumptive taxation scheme for LLP i.e. Section 44AD, 44ADA etc.



# FEMA – FOREIGN CITIZEN/NRI/OCI

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- Indian LLP's are allowed to issue the shares (i.e. Partners share in Profit/loss and Capital Contribution) to a person resident outside India subject to entry routes, sectoral caps and attendant conditionality's specified for foreign investment. Funds to be remitted from foreign bank account, NRE or FCNR account only .
- Investments are classified as “Repatriation” and “Non-Repatriation basis”. ‘Investment on repatriation basis’ is an investment, the sale/ maturity proceeds of which are, net of taxes, eligible to be repatriated and the expression ‘Investment on non-repatriation basis’, will be construed accordingly.
- Investments made on Repatriation Basis by a foreign citizen/NRI/OCI – then in such cases they are allowed to take their Profit share in LLP every year outside India without paying any tax on it as LLP has already paid on it.
- ‘Non-Resident Indian (NRI)’ is an individual resident outside India who is citizen of India. Overseas Citizen of India (OCI)’ is an individual resident outside India who is registered as an Overseas Citizen of India Cardholder under Section 7(A) of the Citizenship Act, 1955. <https://ociservices.gov.in/>
- If NRI/OCI invest on Non-Repatriation basis, it will be consider as “Domestic Investment” and there would be no conditions as specified for FDI.
- Transfer of share by NRI/Foreign citizen to Indian Citizen should not be “more” than fair value as certified by Chartered Accountant or Merchant Banker. Transfer of shares by Indian Citizens to NRI/Foreign citizens should not be “Less” then the Fair value.
- Reporting requirements to RBI is there at the time of investment, transfer and annual filings.



# OTHER LAWS AND POINTS TO TAKE CARE

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- APPLY FOR GST CERTIFICATE – IF TURNOVER IS MORE THAN RS.20 LAKHS FOR SERVICES AND RS.40 LAKHS FOR GOODS. YOU CAN EVEN APPLY VOLUNTARY ALSO FOR VARIOUS REASONS
- APPLY FOR TRADEMARKS / PATENTS / DESIGNS / COPYRIGHTS – IPR  
<https://ipindia.gov.in/>      <https://copyright.gov.in>
- APPLY FOR PROFESSIONAL TAX NUMBER OF EMPLOYEES – EVEN IF ONE EMPLOYEE
- APPLY FOR ESIC & PF – IF CROSSED THE THRESHOLD FOR NUMBER OF EMPLOYEES
- APPLY FOR IEC (IMPORT EXPORT CODE) – IF EXPORT GOODS OR SERVICES
- PREPARE NDA OR OTHER VARIOUS AGREEMENTS WITH CLIENTS, EMPLOYEES, VENDORS ETC.
- APPLY FOR STARTUP PROGRAM IF ALL CONDITIONS ARE FULFILLED
- MAINTAIN PROPER BOOKS OF ACCOUNTS AND KEEP INVOICES OF EACH PAYMENTS AND RECEIPTS – **COMPULSORY FOR EACH ENTITY**



# **STEP BY STEP PROCESS OF LLP FORMATION**

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- APPLY PAN CARD & ADHAR CARD OF ALL INDIAN PARTNERS.
- **DECIDE THE LLP NAME & APPLY WITH MCA FOR NAME APPROVAL**
- **INCORPORATE LLP WITH MCA (PAN AND TAN CARD COMES AUTOMATICALLY WITH INCORPORATION)**
- **PREPARE A NOTARISED LLP DEED AND FILED WITH MCA**
- PREPARE A REGISTERED RENT AGREEMENT MENTIONING YOUR LLP NAME AS "TENANT" WITH POLICE VERIFICATION
- APPLY FOR SHOP AND ESTABLISHMENT LICENCE
- APPLY FOR PROFESSIONAL TAX LICENCE OF LLP
- APPLY FOR CURRENT BANK ACCOUNT
- APPLY FOR MSME CERTIFICATE

**DURATION – 25 TO 30 DAYS**



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- Presentation has been prepared keeping in mind the participants involved and not people in general.
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Stay tuned for next article !!!

Thank You.