LIMITED LIABLITY PARTNERSHIP – BRIEF NOTE

Background

- Limited Liability Partnership (LLP), the world wide recognized form of business organization has now been introduced in India by way of Limited Liability Partnership Act, 2008.
- LLP combines the advantages of both the Company and Partnership into a single form of organization.
- LLP is managed as per the LLP Agreement, like Partnership.

Advantages

- Easy to establish.
- Flexibility in operation
- No restrictions on fund movements
- Easy withdrawals of profits without any additional tax
- No restrictions as to maximum number of partners
- Less Compliance (compared to Company)
- No exposure to personal assets of the partners except in case of fraud (which is a limitation of Partnership).
- MAT and Deemed Dividend provisions are not applicable (major limitations of the Company)
- Audit requirement only in case of capital exceeding Rs. 25 lakh or turnover exceeding Rs. 40 lakh.

Disadvantages

- Cannot raise money from Public.
- As of today, foreign direct investment in LLP is not permitted.

Comparison between existing Business Forms and LLP

	Partnership	**Company**	**LLP**
Legal Status	Not a separate legal entity	separate legal entity under the Companies Act, 1956.	separate legal entity under the Limited Liability Partnership Act, 2008.
Perpetual Succession	It does not have perpetual succession as this depends upon the WILL of partners and Partnership Agreement	It has perpetual succession and members may come and go.	It has perpetual succession and Partners may come and go
Legal Proceedings	Only registered partnership can sue third party	A company is a legal entity which can sue and be sued	A LLP is a legal entity can sue and be sued
Number of Members	Minimum 2 and Maximum 20	2 to 50 members in case of Private Company and Minimum 7 members in case of Public Company.	Minimum 2 partners and no restriction of maximum number of Partners.

Ownership of Assets	Partners have joint ownership of all the assets belonging to partnership firm, but cannot own immovable property or shares in its own name.	Company is independent of the members and can have ownership of assets, shares	The LLP is independent of the members and can have ownership of assets, shares
Rights / Duties / obligation of the Partners / Managing Partners / Directors	Rights / Duties / obligation of the partners are governed by Partnership Deed.	Rights / Duties / obligation of the directors are governed by AOA and resolution passed by shareholders or directors.	Rights / Duties / obligation of the partners are governed by LLP Agreement.
Liability of Partners/Members	Unlimited. Partners are severally and jointly liable for actions of other partners and the firm and liability extend to their personal assets.	Generally limited to the amount required to be paid up on each share.	Limited, to the extent their contribution towards LLP, except in case of intentional fraud or wrongful act of omission or commission by the partner.
Taxation	Income of Partnership is taxed at a Flat rate of 30% plus education cess @3%.	Income of Company is Taxed at a Flat rate of 30% Plus surcharge 10% if income >1 Cr and cess @ 3%. (Under new tax code tax rate is reduced to 25%)	Income of LLP is taxed at a Flat rate of 30% plus education cess @3%.
Remuneration to Partners	Working Partners can draw remuneration maximum up to 60% of taxable profit.	No restrictions on drawing remuneration by Working Directors.	Working Partners can draw remuneration maximum up to 60% of taxable profit.
Principal/Agent Relationship	Partners are agents of the firm and other partners.	The directors act as agents of the company and not of the members.	Partners act as agents of LLP and not of the other Partners.

Transfer of Share / Partnership rights in case of death	In case of death of a partner, the legal heirs have the right to get the refund of the capital contribution + share in accumulated profits, if any. Legal heirs may not become Partner if Agreement excludes him	In case of death of member, shares are transmitted to the legal heirs.	In case of death of a Partner, the legal heirs have the right to get the refund of the capital contribution + share in accumulated profits, if any. Legal heirs will not become Partners unless provided in the Agreement.
Dissolution	By agreement, mutual consent, insolvency, certain contingencies, and by court order.	Voluntary or by order of National Company Law Tribunal.	Voluntary or by order of National Company Law Tribunal.
Transferability of Interest	A Partner can transfer his interest subject to the Partnership Agreement	A member can freely transfer his interest	A Partner can transfer his interest subject to the LLP Agreement
Admission as partner / member	A person can be admitted as a partner as per the Partnership Agreement	A person can become member by buying shares of a company.	A person can be admitted as a Partner as per the LLP Agreement
Retirement as partner / member	A person can retire as Partner as per the Agreement	A member / shareholder can cease to be a member by selling his shares.	A person can retire as Partner as per the LLP Agreement
Requirement of Managerial Personnel for day to day administration	No requirement of any managerial; personnel, Partners themselves administer the business	Directors are appointed to manage the business and other statutory compliances on behalf of the members.	Partners conduct day to day business. Designated Partners (among regular Partners) are responsible for statutory compliances.

Statutory Meetings	There is no provision in regard to holding of any meeting	Board Meetings and General Meetings are required to conduct at appropriate time.	There is no provision in regard to holding of any meeting
Contracts with Partners/Director	Partners are free to enter into any contract.	Restrictions on Board regarding some specified contracts, in which directors are interested.	Partners are free to enter into any contract.
Maintenance of Statutory Records	Required to maintain books of accounts as per Tax laws	Required to maintain books of accounts, statutory registers, minutes etc.	Required to maintain books of accounts.
Annual Filing	No return is required to be filed with Registrar of Firms	Annual Financial Statement and Annual Return are required to be filed with the Registrar of Companies every year.	Annual Statement of accounts and Solvency & Annual Return is required to be filed with Registrar of Companies every year.
Compromise / arrangements / merger / amalgamation	Partnership cannot merge with other firm or enter into compromise or arrangement with creditors or partners.	Companies can enter into Compromise / arrangements / merger / amalgamation	LLP's can enter into Compromise / arrangements / merger / amalgamation.
Public Inspection of Documents	Except partnership deed there is no statutory documents to be viewed.	Can be viewed but only limited, that to on payment of fees.	Incorporation document, name of partners and changes, if any, made therein, statement of account and solvency and annual return filed by each LLP with the ROC shall be available in the electronic registry for public access and inspection on payment of fees
Withdrawal	Unlimited, subject to condition of Partnership Agreement.	Can be withdrawn in following modes :- • Salary • Buy Back • Dividend	Unlimited, subject to condition of LLP Agreement.

Procedure for formation of LLP

a) Deciding Partners and Designated Partners for LLP formation

b) Obtaining DPIN No. & Digital Signature

c) Check the Name Availability

d) Filing of Incorporation Documents

e) Certificate of Registration

f) Information to Registrar of Firm (in case of conversion of partnership firm)

Taxation on LLP

Key Highlights:

- LLP's will be treated as Partnership Firms for the purpose of Income Tax w.e.f assessment year 2010-11
- No surcharge will be levied on income tax.
- Profit will be taxed in the hands of the LLP and not in the hands of the Partners.
- Minimum Alternate Tax and Deemed Dividend provisions not applicable to LLP.
- Interest and Remuneration to Partners will be taxed as "Income from Business & Profession".
- No capital gain on conversion of partnership firms into LLP u/s 47 (xiii)
- Designated Partners will be liable to sign and file the Income Tax return.
- LLP shall not be eligible for presumptive taxation.

Limits on Remuneration to Partners:

On First Rs 3,00,000 of book profit or in case of loss	Rs 1,50,000 or at the rate of 90% of the book-profit, whichever is more
On the balance of book profit	at the rate of 60%

Proposed Direct Tax Code bill do not provide for any limit on the remuneration. Remuneration to Partners shall be governed by the respective Agreement.

No capital gain on conversion

- The conversion from a Partnership Firm to an LLP will not be subject to tax:
  - If the rights and obligation of the partners remain the same after conversion and
  - If there is no transfer of any asset or liability after conversion.

LLP Agreement

- LLP Agreement means any written agreement which determines the mutual rights and duties of the Partners and their rights and duties in relation to that of LLP.

Partners in LLP

Rights of Partners

- Partners have the right to participate in the management of the LLP
- They are not entitled to any remuneration for participating in the management of LLP unless otherwise provided in the LLP Agreement.
- The partners would be entitled to share equal profits in the LLP or as may be provided by LLP agreement.
- The transfer of any right by any partner does not by itself cause the disassociation of the Partner or a dissolution and winding up of the LLP.
- Entitle the transferee or assignee to participate in the management or conduct of the activities of the LLP, or access information concerning the transactions of the LLP.

Admission & cessation of Partner

- A new partner can join the LLP or an existing partner can retire to be Partner of the LLP subject to the compliance of the terms and conditions of the LLP Agreement.

Other Points

Who can be a Partner?

- There should be at least 2 persons (natural or artificial) required to form a LLP.
- In case any Body Corporate is a partner, than it will be required to nominate any person (natural) as its nominee for the purpose of the LLP.

Following can become a partner in the LLP

- Company incorporated in and outside India
- LLP incorporated in & outside India
- Individuals resident in & outside India
- HUF can become partners through Karta.
- Trust can become partners through Trustee.

<u>Designated Partners</u>

Meaning:

- Every LLP shall have at least 2 designated partners (DP) who are individuals and at least one of them shall be a resident in India.
- In case if no partner is designated as such, or if at any time there is only one DP, each partner shall be deemed to be a DP of the LLP.
- In case of a 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 DP.
- The role of Designated Partners in case of LLP is on same footage as of Directors in case of Company.

A Designated Partner shall be

- Liable to all penalties imposed on the limited liability partnership for any contravention of those provisions.

Major duties of Designated Partner

- Notify any changes in the LLP's to Registrar of Companies.
- Notify any changes in the Partners names & residential addresses to Registrar of Companies.
- Notify any change in Registered Office Address to Registrar of Companies.
- Filing of any Annual return, Statement of Accounts and other documents specified under the provisions of LLP Act with the Registrar of Companies.
- Statement of Accounts & Solvency to be signed by the Designated Partners of the Company.
- to preserve and to produce before an inspector or any person authorized by him in this behalf with the previous approval of the Central Government, all books and papers of, or relating to, the limited liability partnership or, as the case may be, the other entity, which are in their custody or power
- Responsible for signing all the e-forms filed with the Registrar of Companies.
- Stringent financial penalties are provided in LLP act for procedural non compliances.

<u>Contribution in LLP</u>

Is it necessary to contribute for a Partner?

- No, as per LLP Act 2008 Contribution is not a pre requisite for formation of a LLP or for being a Partner in any LLP.
- Partners through LLP Agreement can decide the amount and form of Contribution as per their suitability. The LLP Agreement must specify the contribution intended to be paid by all the members and the form in which it will be paid.

Form of Contribution

- As per LLP Act 2008 the contribution can be in the form of tangible, movable or immovable or intangible property or other benefit to the limited liability partnership, including money, promissory notes, and other agreements to contribute cash or property and contracts for services performed or to be performed.

Closing of LLP

- In case the LLP wants to close down its business or where it is not carrying on any business operations, it can make an application to the Registrar of Companies for declaring the company as defunct and removing the name of the LLP from its register of LLP's.
- There should have been no liability existing or obligation subsisted on part of LLP and its Partners.
- There should be no litigation pending for or against LLP.
- The assets of the LLP shall be made available for the payment or discharge of all its liabilities and obligations even after the date of the order removing the name of the LLP from the register

Voluntary Winding up

The Partners may between themselves decide to stop and wound up the operations of the LLP.

Compulsory winding up

LLP may be compulsorily wound up by the Tribunal, in certain circumstances.

Gray Issues on LLP

- Amount of stamp duty payable on conversion of private limited in to LLP?
- Stamp duty payable on filling of LLP Agreement or incorporating LLP?
- Tax impact on conversion of Private Limited Company to LLP?