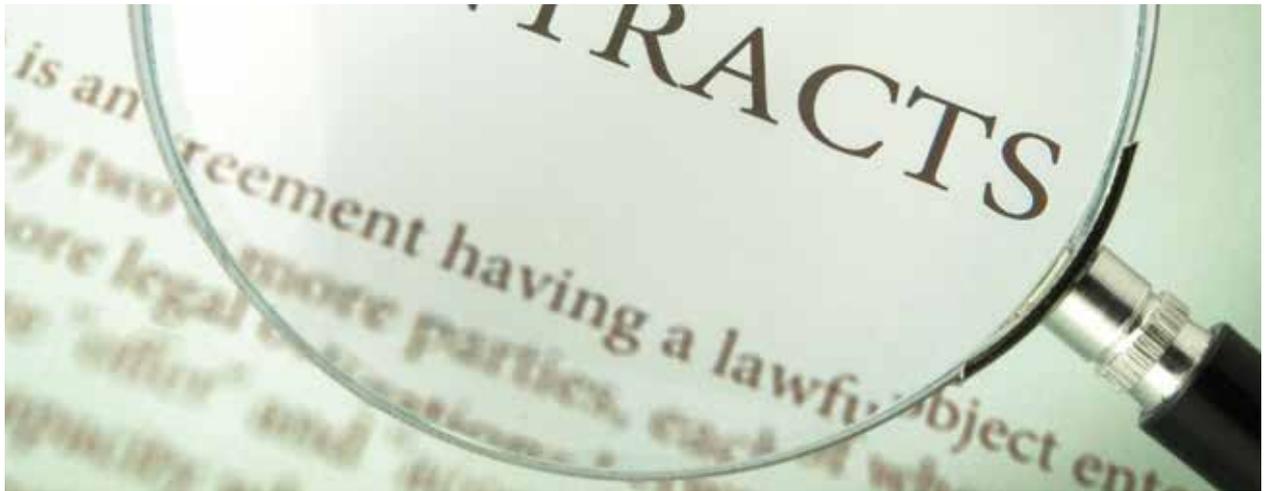


# Opportunities for CAs in LLP Law



Sole proprietorship, partnership, company and co-operative societies are the vehicles for carrying on businesses, professions, vocations and occupations. Each vehicle has the merit of speed, mileage and flip side, of cost and security. Business vehicles are no exception to this general rule. Business is being carried on through any of such vehicles that suits most for the occasion. However, now, a brand new business vehicle that will zap this millennium has arrived. *LLP*. Yes, they call it *LLP*. The law governing *LLPs* is contained in the Limited Liability Partnership Act, 2008. In an increasingly litigious market environment, the prospect of being a member of a partnership firm with unlimited personal liability is, to say the least, risky and unattractive. Operating flexibility adds yet another feather in the *LLP* cap. Considering the fact that the Government desires entrepreneurs to focus on core activity, *LLPs* are encouraged. These factors prompt any Chartered Accountant to take a serious look at this new vehicle. And that too from a two-fold perspective – (i) for practicing profession and (ii) for professional practice.

## Commend *LLP*

Why should a professional recommend the *LLP* form of organisation for any entity? Obviously for the advantageous running and functioning of the business. Therefore, comparative merits of *LLP* over the other forms need to be unfolded, so that the decision on constitution of *LLP* can be facilitated.

Proprietorships and partnerships are forms of organisation, fancied for ages for functional flexibility. While for a personal venture, it is a proprietorship and for joint ownership, partnership is constituted to carry on the activity. However, any non-corporate entity lacks perpetual succession. It has limitations in raising finance. The capacity to take risk is limited, as liability of the owner/s is unlimited. It is inconvenient to be partner with any stranger.

These issues are addressed in an *LLP* form of ownership. Limited liability and perpetual succession



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are endured. Even a proprietor can eclipse his business risk within the bounds of business wealth and place personal wealth completely beyond the ambit of business risks. He can find his near relation to be another partner for a token share in profit. Now, the Companies Act, 2013 has made available the option of One Person Company (OPC) and the sole proprietor can think of constitution of an OPC and then form an LLP with his OPC as another partner. The LLP has no maximum cap on number of partners and that removes yet another hurdle of number of partners associated with partnerships.

With these features known, a good number of non-corporate enterprises could go in for LLP form to carry on the business.

‘Company’ is a preferred entity for limited liability and perpetual succession. In a company form of organisation, certain limitations are faced, which can be overcome by LLP.

First and foremost, on profit distributions, a substantial (15%+) tax is attracted in company form which is absent in an LLP. Besides, the other limitations include:

- i) Restrictive provisions relating to managerial remuneration;
- ii) Regulation on acceptance of deposits;
- iii) Elaborate formalities for conduct of meeting, record-keeping, filings;
- iv) Private company has to limit shareholders to a maximum of 200;
- v) Limitations on utilisation of cash float available with the Company for personal ends;
- vi) Deemed dividend

The LLP form of organisation not only has done away with these limitations, but even makes it possible to offer payment of interest on capital contributions. These advantages are coupled with the ease in functioning.

Public issue is possible only for a ‘company’ and not of ‘LLP’. Where public issue is planned after three years or so, the business can be carried out as LLP and at an opportune moment it can be converted into ‘company’. It will be possible to showcase numbers of LLP in offer document. Some costs will be associated for the conversion process. These can be weighed against direct tax benefits flowing from LLP. Further public issue is a dicey proposition in the dynamic economic settings present today. It may get delayed or even abandoned. Therefore, why not access umbrella of direct tax shelter, till the decision is taken?

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### Effective Control

In case of the company form of organisation, the ownership and management is by capital based democracy. It is difficult or nearly impossible to remove any member from the company.

A well-drafted LLP deed can provide solutions to such issues. Therefore, in a good number of business situations where venturers are joining hands for a common object, LLP will suitably translate their specific requirements into a binding agreement. For example, there can be a clause for expulsion of any partner, which can be effectively employed where trusted employee is to be incentivised without impairing ultimate legal control on the business by the owners. A tailor-made LLP deed will meet various desires of participating owners. A Chartered Accountant can provide such a tailor-made document to address issues singular to an entity or situation.

### Useful Propositions

In the following circumstances, constitution of LLP will be an attractive proposition as opposed to the company form of organisation:

1. **Holding Company:** Family-owned companies incorporate holding companies to park their shareholding. This has various advantages with the family particularly, in days of dissenting family entities.
2. **Subsidiary companies:** There are various businesses usually undertaken by large business groups that have a flagship listed company and peripherals of small unlisted companies. These unlisted companies focus on businesses dissimilar or ancillary to the business of the flagship company e.g., a flagship engineering company may form a subsidiary for software business, a flagship automobile company may form a subsidiary for finance, after-sales service business or a flagship finance company may form a subsidiary for trading activities to sell confiscated goods.

3. **India Business:** An enterprise from a foreign country can constitute its Indian business advantageously as LLP rather than as a company. Dividend distribution tax and a number of compliances can be saved.
4. **Key Employee Benefit Entities:** Certain business houses desire to reward key employees by entrusting certain associated or ancillary business to employee-constituted entity. This provides employee groups with some extra reward apart from salary while the assigned work gets accomplished effectively, benefiting the sponsor company.
5. **Projects Business:** In a project, diverse skill sets are required. These diverse skill sets are not common for all the contracts. It is, therefore, often a contract marriage of diverse skill sets for execution of a project running over a number of years and cores of rupees. A typical need of entrusting the whole of the responsibility with one person gets addressed in the LLP mechanism.
6. **Civil Construction:** A number of civil construction projects are undertaken and executed in a number of combinations by the promoters and builders. Sometimes, plot owners desire to join as partners in the project to exploit the construction profits for waiting period to receive the consideration. It facilitates joining in by landlord for sharing in profits without accessing project risks.
7. **Profession:** It is common in advanced countries to have a financing partner for a professional practice. This enables easy access to the desired infrastructure to run the practice. Obtaining such facilities on hire may not be possible initially. Contacts of the financier may also prove useful for development of the profession.
8. **Financing Activity:** Moneylenders carry enormous risk. The risk factor places restrictions on business. With the armour of limited liability, business growth can take place seamlessly.
9. **Unknown Partners:** Where co-ventures are unknown, there is hesitation in joining hands as partners. The hitherto best-suited option of company involves a good amount of paperwork for constitution and running of an enterprise. Adjustments of rights in a tailor-made fashion is not possible in a company structure.
10. **Daunting Regulatory Requirements:** In certain jurisdictions, business operations carry substantial obligations and it becomes difficult for them to participate in day-to-day activities. For example—food adulteration may attract imprisonment for persons associated with the food business. The owner can safeguard himself from the exposure by inducting operating persons as partners.
11. **Concept Sale:** Where the promoter is desirous of setting up certain business activity and after the activity gears up, selling the whole venture, it is better to set up the venture as an LLP. Change of hands becomes possible by making modifications in the LLP document, without there being any need for other changes in registrations, etc.
12. **Tenancy:** Our country is infamous for tenancy litigations and landlord-tenant relations. Continuation of tenancy or other rights with a business venture can be facilitated in case of succession or change in ownership, in the LLP mode.

Considering such merits, a professional can make use of them in befitting situation and recommend to the client constitution of or conversion into LLP.

### Conversion of Entity into LLP

In order to access several benefits as opposed to company form of organisation, businessmen may desire to convert the existing private limited companies or unlisted companies into LLP. Even a listed company can be so converted, the first step being of delisting of the company.

A professional can suggest and carry on the entire process of conversion of an existing entity into an LLP, as a turnkey assignment.

A separate article is published in the issue of the journal on direct taxation and therefore, scoped out from this article.

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**Multidisciplinary practice is being actively discussed. Enabling provisions are being incorporated in the regulations governing various professions. Under one roof, clients will demand solutions for taxes — direct and indirect, local level, state level and national, foreign exchange, raising of funds, business agreements, labour law compliance, MIS and computer systems, documentation, internal and management audit, legal compliances and many more. This makes it necessary to harness diverse skill-sets under one roof.**

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In such an assignment, besides constituting an LLP, various other aspects need attention and resolution. These include:

- (i) Carry forward of losses and allowances;
- (ii) Credit for taxes paid, minimum alternate tax or alternate minimum tax paid;
- (iii) Sales tax set off pendency;
- (iv) Pending Cenvat credit;
- (v) Indirect taxes on sale of stock, assets, etc.
- (vi) Outstanding obligations for exports, etc;
- (vii) Stamp duty on transfer of property, particularly, immovable property;
- (viii) Regulations and levies of industrial authorities like MIDC in Maharashtra;
- (ix) Tenancy issues;
- (x) Transfer of employees and labour;
- (xi) Pending litigation;
- (xii) Continuation of clientele and vendor code

And so on.

Therefore, a professional should be well-equipped to address these issues. It is possible to constitute a team of professionals to assist or participate in addressing these multidisciplinary issues.

### Professional Practice and LLP

In advanced countries, professionals were confronted with substantial liability arising from professional practice. These phenomena gave birth to the LLP form of organisation. The foreign litigious environment will soon be order of the day in India. This situation presents a case for practicing in the LLP format. In an LLP, each partner can protect his personal wealth, where he is not a party to an event giving rise to liability or the claim does not arise for want of diligence on his part.

Besides, multidisciplinary practice is being actively discussed. Enabling provisions are being incorporated in the regulations governing various professions. Under one roof, clients will demand solutions for taxes — direct and indirect, local level, state level and national, foreign exchange, raising of funds, business agreements, labour law compliance, MIS and computer systems, documentation, internal and management audit, legal compliances and many more. This makes it necessary to harness diverse skill-sets under one roof. This will also enable the enterprises seeking service to identify responsibility for service baggage with one service provider and will obviate for him the need to dip into the matter.

Organisations are growing big, if not large. Organisations are having multi-location presence throughout India and even beyond. For such an

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organisation, can a small audit firm do justice? While not only the numbers should grow but the locations of the firm should also have presence at various regions, where the client has business. Growing complications arising from law, accounting standards coupled with complex business situations require a professional to focus on a few of these, leaving other aspects to be taken care of by others. This may not be possible in a seamless manner, unless diverse skill-sets are available under one roof. LLP containing a number of professionals and also at various locations will find takers easily as opposed to partnership.

Even if you are practicing as a sole proprietor or a small partnership and are quite happy with it, LLP presents a case for your consideration. LLP contains your risk exposure and protects personal wealth. After certain years, you will call it a day. How will the professional practice get transferred without much disruption? How can you encash the 'goodwill' that you have developed by practicing the profession for decades?

Now, company law, income tax law, etc., authorise appointment of an LLP for carrying on the attest function. Updating in certain state laws allowing LLPs to carry out attest function may be pending. Here some research can be done and process be initiated for a dialogue on the necessary amendments.

Seniority of a firm is one issue for public sector appointments. However, that has been addressed by the Institute in carrying out the process of conversion.

### Summing Up

LLP presents a good case for canvassing the business model to clients for setting up new ventures. In a number of cases, it can be a better alternative to convert the existing model into an LLP. Widening the professional horizon is made possible by LLP. For small practices, issues of risk and succession are getting addressed.

Therefore, LLP is an idea whose time has come. Befriend it wholeheartedly. ■