



*Intra Legem*

# *Company Vs LLP Vs Partnership*

*September 12, 2016*

## COMPARATIVE ANALYSIS BETWEEN A COMPANY, LIMITED LIABILITY PARTNERSHIP (LLP) AND TRADITIONAL PARTNERSHIP FIRM<sup>[1][2]</sup>

### Introduction

An entrepreneur planning to start a new business venture has couple of questions before choosing a business entity for its business. Its decision would be based on a number of factors, viz. nature of business, cost of registration, number of members, extent of compliances required, benefits that each entity brings to the business, etc. Further with the introduction of the Companies Act, 2013 and concepts like LLP and One Person Company, entrepreneurs



- 1 For the purpose of the comparison table, "**Company**" shall refer to only private and public companies. Company limited by guarantee, One Person Companies, Section 25 companies, etc. have been excluded from the purview of the analysis. "**Partnership**" would only imply a registered partnership firm. Unregistered partnership firm has been excluded from the purview of the analysis.
- 2 "**Yes**" would generally mean yes, unless prohibited, and "**No**" would generally mean no, unless permitted; "#" denotes that a particular provision maybe subject to or contains additional terms and conditions



have a wide array of business entities to choice from. Therefore, it is wise for an entrepreneur to make a comparison between a Company, a LLP and a partnership Firm and understand the legalities, advantages and disadvantages of each of them.

We have, herein below, provided a comparison of some of the features of a Partnership Firm vis-à-vis a Limited Liability Partnership and a Company in the form of frequently asked questions that entrepreneurs usually have prior to selecting a particular type of entity.

	Company	LLP	Partnership Firm
<b>What is the Governing Law?</b>	Companies Act, 2013 and applicable provisions of the Companies Act, 1956 and rules made thereunder.	The Limited Liability Partnership Act, 2008.	The Indian Partnership Act, 1932.
<b>Whether registration is mandatory and if yes, which is the authority under which registration is required to be made?</b>	Yes. Registrar of Companies.	Yes. Registrar of LLP.	Yes. Registrar of Firms.
<b>Whether the entity is separate and distinct?</b>	Yes.	Yes.	No.



	Company	LLP	Partnership Firm
<b>What are requirements pertaining to the name of entity?#</b>	To contain the following suffix: <ul style="list-style-type: none"> <li>➤ “Limited” in case of public company; or</li> <li>➤ “Private Limited” in case of private company.</li> </ul>	To contain “Limited Liability Partnership” or “LLP”, as a suffix	To contain brackets and word (Registered) immediately after its name.
<b>Whether the entity has perpetual succession?</b>	Yes.	Yes.	No.
<b>What are the charter / incorporation documents required?</b>	Memorandum of Association and Article of Association	LLP Agreement	Partnership Deed
<b>Whether the charter / incorporation documents are open for public inspection?</b>	Yes.	Yes.	Yes.
<b>Whether the entity is required to have a common seal?</b>	Yes. <i>The said requirement may be made optional or omitted, subject to the notification of the press release dated December 02, 2014 in relation to the proposed Companies (Amendment) Bill, 2014.</i>	No. #	No.



	Company	LLP	Partnership Firm
<b>Whether the entity can sue?</b>	Yes.	Yes.	Yes.
<b>Whether foreign participation is permitted in the entity?</b>	Yes. #	Yes. #	No. #
<b>What is the minimum and maximum number of membership permissible in each entity?</b>	<ul style="list-style-type: none"> <li>➤ Minimum 2 (two) members and maximum 200 (two hundred) members in case of private company; and</li> <li>➤ Minimum 7 (seven) members in case of public company (no maximum limit)</li> </ul>	Minimum 2 (two) partners (no maximum limit)	<ul style="list-style-type: none"> <li>➤ Minimum 2 (two) persons;</li> <li>➤ Maximum 10 (ten) persons (<i>in case of banking business</i>) and 20 (twenty) persons (<i>in case of non-banking business</i>)</li> </ul>
<b>Whether the entity has ownership of assets, independent from its member/partners?</b>	Yes.	Yes.	No.
<b>What governs the rights, duties, obligation of the partners / managing partners / directors?</b>	Articles of Association, resolution passed by shareholders or directors and the Governing Law.	LLP Agreement and the Governing Law.	Partnership Deed and the Governing Law.



	Company	LLP	Partnership Firm
<b>What is the extent of liability of the partners/members?</b>	Limited to the amount required to be paid-up on each share.	Limited, to the extent of the contribution towards forming the LLP.#	Unlimited. Partners are severally and jointly liable for actions of other partners and the firm and the liability extends to their personal assets.
<b>Whether the income of the entity is subject to tax? And if yes, then what is the rate of income tax?#</b>	Yes. Flat rate of 30% plus surcharge as applicable.	Yes. Flat rate of 30% plus education cess as applicable.	Yes. Flat rate of 30% plus education cess as applicable.
<b>Who acts as the agent of the entity?</b>	Directors and under certain circumstances, the Key Managerial Personnel.	Partners.	Partners.
<b>What are the provisions relating to transfer / inheritance of rights?</b>	Ownership is easily transferable.#	Transfer is governed by the LLP Agreement.	Not transferable.
<b>What are the provisions relating to transfer of shares / partnership rights in case of death of members/partners?</b>	Shares are transmitted to the legal heirs	The legal heirs have the right to get the refund of the capital contribution along with share in accumulated profits, if any. #	The legal heirs have the right to get the refund of the capital contribution along with share in accumulated profits, if any. #



	Company	LLP	Partnership Firm
<b>What are the requirements for a Director/Designated Partner?</b>	Director is required to have a Director Identification Number prior to their appointment	Designated Partner is required to have a Designated Partner Identification Number prior to their appointment.	No requirement.
<b>What is the minimum number of Directors / Designated Partners that are required to obtain Digital Signature?</b>	1(one).	1(one).	No requirement.
<b>What are the provisions for dissolution of the entity? #</b>	Can be voluntary or involuntary or by an order of the High Court or National Company Law Tribunal ( <i>once incorporated</i> ).	Can be voluntary or involuntary or by an order of the High Court or National Company Law Tribunal ( <i>once incorporated</i> ).	Can be by agreement, mutual consent, insolvency, certain contingencies, and by court order.
<b>Whether a member / partner can transfer their interest?</b>	Yes.	No.#	No.#
<b>Generally, what is the procedure for a member/partner to get admitted into the entity?</b>	By acquiring shares.	As per the LLP Agreement.	As per the Partnership Deed.



	Company	LLP	Partnership Firm
<b>What is the procedure for cessation as member/partner of an entity?</b>	By transferring the shares.	As per the LLP Agreement or in absence of the same by giving 30 (thirty) days prior notice to the LLP.	As per the Partnership Deed.
<b>What is the requirement of the managerial personnel for day-to-day administration?</b>	Directors and Key Managerial Personnel are appointed to manage the business and other statutory compliances on behalf of the members.	Designated Partners are responsible for managing the day to day business and other statutory compliances,	No requirement. Partners themselves administer the business
<b>What is the remuneration required to be paid by the entity to the managerial personnel for day-to-day administration?</b>	Subject to the Governing Law.	Subject to the LLP Agreement.	Subject to the Partnership Deed.
<b>What are the statutory meetings that are required to be conducted?</b>	Board Meetings and General Meetings. #	No provision.	No provision.
<b>How are the voting rights of the members/partners determined?</b>	As per the number and nature of shares held. #	As per the terms of LLP Agreement.	As per the terms of the Partnership Deed.



	Company	LLP	Partnership Firm
<b>What are the provisions relating to maintenance of minutes for meetings of entity?</b>	The proceedings of meeting of the board of directors / shareholders are required to be recorded in minutes.	The proceedings of meetings of the Partners /Designated Partners are governed by the provisions of the LLP Agreement.	No provision.
<b>What are the provisions relating to maintenance of statutory records under the Governing Law?</b>	Books of accounts, statutory registers, minutes etc.	Books of accounts.	Books of accounts.
<b>What are the annual filings required to be made by the entity?</b>	Annual Financial Statement and Annual Return are required to be filed with the Registrar of Companies every year.	Annual Statement of accounts and Solvency and Annual Return is required to be filed with Registrar of LLP every year	No requirement.
<b>What is the proof of the interest of the members/partners in the entity?</b>	Share certificate is proof of ownership of shares held by the members.	The interest of the partners in the firm is evidenced by LLP Agreement.	The interest of the partners in the firm is evidenced by Partnership Deed.
<b>Can the entity enter into compromise / arrangements / merger / amalgamation?</b>	Yes.	Yes.	No.





	Company	LLP	Partnership Firm
<b>Whether there are any provisions made by the entity with respect to oppression and mismanagement?</b>	Yes.	No.	No.
<b>Whether the entity enjoys credit worthiness?</b>	Stringent Compliances and disclosures under various laws, ensures high degree of credit worthiness.	LLP enjoys higher creditworthiness than a Partnership but lesser than a Company.	Creditworthiness is dependent upon goodwill and creditworthiness of its partners.

## Conclusion

Thus the above factors would aid an entrepreneur to decide between an appropriate business entity for its business.

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