

CONCEPT PAPER

ON LIMITED LIABILITY PARTNERSHIP (LLP) IN PAKISTAN

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1. INTRODUCTION TO LIMITED LIABILITY PARTNERSHIP

Limited liability Partnership “LLP” is a new corporate structure that combines the flexibility of a general partnership and the advantages of limited liability of a company at a low compliance cost. In other words, it is an alternative corporate business vehicle that provides the benefits of limited liability of a company, but allows its members the flexibility of organizing their internal management on the basis of a mutually arrived agreement, as is the case in a general partnership firm.

Owing to flexibility in its structure and operation, LLP would be useful for small and medium enterprises, in general, and for the enterprises in services sector, in particular. Internationally, LLPs are the preferred vehicle of business, particularly for service industry or for activities involving professionals. Introduction of LLP in Pakistan is expected to enable entrepreneurs, professionals and enterprises providing services of any kind or engaged in scientific and technical disciplines, to form commercially efficient vehicles suited to their requirements.

2. LIMITED LIABILITY LIMITED PARTNERSHIP (LLLP)

LLPs have another known structurally variant business model known as limited liability limited partnership “LLLP”. Such model consists of one or more general partners and one or more limited partners. This vehicle is suitable for partnership firms where some members ought to have unlimited liabilities.

3. GENERAL PARTNERSHIP AND EXISTING LEGAL FRAMEWORK

In Pakistan, general partnership firms are regulated through Partnership Act 1932 and such firms are not considered as juristic person (legal personality) and partners of firm have unlimited liability to fulfill the obligations and liabilities of the firm. General partnerships are normally formed where there is a desire to have some structural flexibility along with some formality of relationship between partners. There is no compulsory requirement for registration of a general partnership in Pakistan rather it is optional for the members to keep it formal or informal.

Legal regime for establishment and regulation of general partnerships in Pakistan is stated in the Partnership Act, 1932 which defines a partnership in the following terms:

"as the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all."

Any twenty or less persons desiring to carry out a lawful commercial activity or a profession may form a partnership except in certain cases e.g. where twenty or more persons may form partnership to undertake practice as lawyers or accountants or any other practice which cannot be carried out as a limited liability company under the provisions of law.

4. COMPARISON BETWEEN GENERAL PARTNERSHIP AND LLP

LLP is a partnership in which all the partners have limited liability in an incorporated entity and is a legal entity separate from its partners. Existence of LLP is not dependent upon its members/partners because it has recognition of legal person as per law. It, therefore, shows elements of general partnerships and company. In LLP, one partner is not responsible or liable for another partner's misconduct or negligence whereas in partnership registered under Partnership Act 1932 all the partners are liable, jointly with all the other partners and also severally, for all acts of the firm done while they are partners. Unlike corporate shareholders, the partners in an LLP have the right to manage the business directly. In contrast, corporate shareholders have to elect a board of directors to manage the affairs of company. A comparative table highlighting the difference between general partnership and LLP is attached as Table-I.

5. BUSINESS SUITABLE FOR LLP

LLP has been accepted most suitable business vehicle for manufacturing and services sectors in different jurisdictions around the globe. In last two decades most of the jurisdictions introduced LLP and LLLP regime and enacted legislation for this purpose. An analysis of international jurisdictions is attached as Table-II.

5.1 Manufacturing Sector

LLP is recognized as legal form in manufacturing sector. Many small and medium enterprises have enjoyed the dual advantage of less compliance with higher access to credits in the market.

5.2 Services Sector

LLP is a lifeline for the services sector and especially for professionals like chartered accountants, company secretaries and advocates. In short, LLP can be formed to do any type of business such as manufacturing, trading, commercial or professional services with the object to earn profits.

6. CHARITABLE PURPOSE AND LLP

LLP cannot be formed for charitable purpose because it is designed for mutual benefit and profit earning through commercial purpose, whereas charitable organizations are formed for welfare objects.

7. EIGHTEENTH CONSTITUTIONAL AMENDMENT AND ITS IMPLICATIONS ON INTRODUCTION OF LLP CONCEPT

After the eighteenth constitutional amendment unincorporated businesses such as general partnerships fall under the provincial domain and it is beyond the legislative competence of the Parliament to introduce laws in relation to unincorporated entities such as general partnerships. As per entry 31 of Federal Legislative List Schedule Four of the Constitution of Islamic Republic of Pakistan, federation has power to legislate on matter related to corporate entities such as LLP. For reference entry 31 of “FOURTH SCHEDULE, Article 70(4), Legislative Lists, Federal Legislative List, PART I” is reproduced below;-

“Corporation, that is to say, the incorporation, regulation and winding-up of trading corporations, including banking, insurance and financial corporations, but not including corporations owned or controlled by a Province and carrying on business only within that Province, or co-operative societies, and of corporations, whether trading or not, with objects not confined to a Province, but not including universities.”

In our opinion, the term corporation includes all incorporated entities including LLP. Even if for sake of argument it is admitted the legislation on the subject of general partnership is the exclusive domain of the provinces, the Parliament can legislate on this subject for all federal territories including Islamabad Capital Territory and draft law may be forwarded to all provinces for implementation in their respective territories as per their ease and requirements. However, Parliament can also adopt the procedure laid down in Article 144 of the Constitution.

8. PROPOSED LEGAL FRAMEWORK FOR LLP

8.1 Structure and Nature of Entity

- 8.1.1 The LLP is a body corporate and a legal entity separate from its partners. Any two or more persons, associated for carrying on a lawful business with a view to profit, may by subscribing their names to an incorporation document and filing the same with the Registrar, form a LLP.
- 8.1.2 The LLP will have perpetual succession.
- 8.1.3 The mutual rights and duties of partners of an LLP inter se and those of the LLP and its partners are governed by an agreement between partners or between the LLP.
- 8.1.4 The LLP being a separate legal entity, will be liable to the full extent of its assets, with the liability of the partners being limited to their agreed

contribution in the LLP which may be of tangible or intangible nature or both tangible and intangible in nature.

- 8.1.5 No partner in LLP would be liable on account of the independent or unauthorized actions of other partners or their misconduct. The liabilities of the LLP and partners who are found to have acted with intent to defraud creditors or for any fraudulent purpose shall be unlimited for all or any of the debts or other liabilities of the LLP.
- 8.1.6 Every LLP would have at least one partner as Designated/Managing Partners, who shall be resident in Pakistan. The duties and obligations of Designated Partners shall be provided in the law.
- 8.1.7 The Partnership Act, 1932 shall not be applicable to Limited Liability Partnerships.

8.2 Ease of Incorporation

A limited liability partnership may be registered if a statement by every person who is to be a partner of the limited liability partnership is lodged with the Registrar along with the partnership agreement, containing name of the proposed LLP, general nature of the proposed business of the LLP, registered office of LLP, identification of all partners and Designated/Managing Partners partner.

8.3 Partnership Deed/Partnership Agreement

Partnership deed or partnership agreement is a constitutive document of the LLP, which define the existence of the entity and regulate the structure and control of the entity and its members. It details matters pertaining to the duties, liabilities, and mutual rights of the partners. This is equivalent to the memorandum and articles of association of a limited company. The requirement of object clause shall not be mandatory in partnership agreement and it may undertake any business permissible by law and not designed, intended or calculated to deceive or defraud public at large.

8.4 Capital Contribution

Minimum capital requirement for incorporation of LLP shall be ten hundred thousand rupees and minimum contribution by one partner shall be five hundred thousand rupees.

8.5 Preparation of Statement of Accounts and Audit Review

The LLP shall be under an obligation to maintain annual accounts reflecting true and fair view of its state of affairs. A statement of accounts and solvency shall be filed by every LLP with the Registrar every year on such time and dates as prescribed for any category of LLP. The accounts of LLPs shall also be audited, subject to any class of LLPs being exempted from this requirement by the Registrar of LLP. Audit requirements for LLP's

books of accounts shall be flexible but LLP shall be required to get an audit of review of books of accounts any person who is a member of any professional accountancy body.

8.6 Single Annual Return and Other Filings

LLP shall not be required to submit any annual return to the Registrar, however any change in particulars of partners, place of business etc., shall be intimated to the registrar on prescribed form indicating the nature, cause and effect of such change. Only online filing shall be allowed for LLP's.

8.7 Filing Days to be prescribed as per classification of LLPs

Split filing regime shall be introduced for different categories of LLP's, such as trading, manufacturing etc. Different days shall be allocated for each category of LLP to submit their returns so that any possible delay in processing and receiving of returns may be avoided.

8.8 Flat Rate Fees Structure

To encourage professionals and entrepreneurs to incorporate their businesses as LLP "Flat Fee Structure" regime shall be introduced for all filings as part of the schedule to the proposed law.

8.9 Convertibility of Status

A single member company, private company or an unlisted public company shall be allowed to convert into LLP and vice versa, as in accordance with the provisions of the proposed law.

8.10 Winding up and Strike off

The winding up of a limited liability partnership may be either voluntary or by the Court. The Registrar of LLP shall have the power to strike off the name of the company from the register of LLPs.

8.11 Registrar of LLP (ROL)

There shall be a separate office of registrar for LLP companies. Any officer of the Commission shall be notified as the Registrar of LLP by the Federal Government on recommendation of the Securities and Exchange Commission of Pakistan.

8.12 Administrative and Enforcement Provisions

Administrative and enforcement provisions such as inspection, call for information and investigation shall be provided in the proposed law.

8.13 Application of Companies Ordinance 1984

The proposed LLP bill shall provide for application of certain provisions of Companies Ordinance 1984 “the Ordinance”, to be applicable on LLP, with or without modification.

8.14 Taxation Issues

LLP’s will be treated as Partnership Firms for the purpose of income tax. Profit will be taxed in the hands of the LLP and not in the hands of the partners. Dividend distribution tax will not be applicable for LLP. Remuneration to partners will be taxed as “Income from Business & Profession”. No capital gain on conversion of partnership firms into LLP. Capital Gain on conversion of Company into LLP will be exempt from tax. LLP shall not be eligible for presumptive taxation.

Table -I**Comparison between General Partnership and LLP**

S.No.	Particular	Limited Liability Partnership	General Partnership
1.	Liability	Partners have Limited Liability because they can bind LLP with their act but not to other partners.	Partners have unlimited liability hence they remain liable for unlawful acts of other partners.
2.	Body Corporate	LLP is treated as a Body Corporate or as juristic person.	Partnership is not treated as juristic person.
3.	Legal Entity	LLP is separate legal entity from its partners.	Partnership is not a separate from its members. Partners are collectively referred as firm.
4.	Perpetual succession	LLP has perpetual succession irrespective of death or retirement of either of partner.	Partnership can be dissolved on death or retirement
5.	Minimum Partners	Minimum 2 partners require to form LLPs	Minimum 2 partners required.
6.	Dissolution	Partners cannot dissolve LLP	Partnership can be 'at will'
7.	Maximum Partners	No limit on no. of partners	Maximum number of partners 20
8.	Registration	Compulsory /LLP require compulsory Registration with Registrar of LLP	Optional /Registration is required with registrar of firms.
9.	Property	Property, assets, liabilities, rights, privileges and obligations can be owned by LLP as it enjoy separate legal existence apart from its partners	Property cannot be held in firm name
10.	Partnership Act,1932	Non-Applicability of Provisions of Partnership Act,1932	Provisions of Partnership Act,1932 apply to partnership

			firm
11.	Common Seal	It denotes the signature LLP and it is mandatory to have a common seal.	Not required
12.	Ownership of Assets	The LLP has ownership of assets and Partners only have capital contribution in the LLP	Partners have joint ownership of all the assets
13.	Liability	Liability of partners is limited up to their capital contribution however in case a partners acts with an intension to conduct fraud, they are personally liable.	Liability of partners is unlimited
14.	Agency Relationship	Partners are agents of LLP	Partners are agents of the firm and each other
15.	Contracts / Business transaction by Member/ Directors/ Partners	A partner can enter into contract with the LLP	A partner cannot enter into contract with the firm
16.	Compromise \ arrangements \ merger \ amalgamation	Provisions exist in all jurisdictions for Compromise \ arrangements \ merger \ amalgamation for LLP.	There is no provision for Compromise \ arrangements \ merger \ amalgamation in the Partnership firm.
17.	Rights / Duties / obligation of Partners / Managing Partners	Rights / Duties / obligation of partners are governed by Partnership Agreement.	Rights / Duties / obligation of partners are governed by partnership deed.

Table-II**Comparative Analysis of International Jurisdictions**

Item	Jurisdiction	Legislation	Short Notes
1.	United States ("US")	The Revised Uniform Partnership Act (1997) is a standard statute adopted for the governance of business partnerships by U.S. States.	In the US, each individual State has its own law governing the formation of Limited Liability Partnerships. However, although specific rules vary from state to state, all States have passed variations of the Revised Uniform Partnership Act.
2.	United Kingdom ("UK")	Limited Liability Partnerships Act 2000	<p>LLPs are governed by the Limited Liability Partnerships Act 2000 (in Great Britain) and the Limited Liability Partnerships Act (Northern Ireland) 2002 in Northern Ireland.</p> <p>A UK LLP is a corporate body - that is to say, it has a continuing legal existence independent of its members, as compared to a Partnership which may (in England and Wales, does not) have a legal existence dependent upon its membership.</p> <p>A UK LLP's members have a collective ("Joint") responsibility, to the extent that they may agree in an "LLP agreement", but no individual ("several") responsibility for each other's actions.</p> <p>As with a limited company or a corporation members in an LLP cannot, in the absence of fraud or wrongful</p>

			<p>trading, lose more than they invest.</p> <p>In relation to tax, a UK LLP is similar to a partnership: it is tax transparent or pass-through, that is to say it pays no UK tax but its members do in relation to the income or gains they receive through the LLP.</p> <p>No requirement for the LLP agreement to be in writing because simple partnership-based regulations apply by way of default provisions.</p> <p>The LLP structure is commonly used by accountants, as a company may not act as auditor to another company. LLPs are also becoming more common by firms in the legal profession such as solicitors and patent attorneys that by law are prohibited incorporating as companies.</p>
3.	Singapore	Limited Liability Partnerships Act 2005	<p>The Limited Liability Partnerships Act 2005 draws on both the US and UK models of LLP, and like the latter establishes the LLP as a body corporate. However for tax purposes it is treated like a general partnership, so that the partners rather than the partnership are subject to tax (tax transparency).</p>

4.	India	Limited Liability Partnership Act 2008	<p>The Limited Liability Partnership (LLP) is governed by Limited Liability Partnership (LLP) Act, 2008 and Limited Liability Partnership Rules, 2009. The LLP Rules, 2009 contains administrative provisions for the formation, management, reconstruction and winding up of LLPs. Central Government can make applicable any provision of Companies Act to LLP with suitable modifications by issuing a notification. The Indian Partnership Act, 1932 shall not be applicable to LLPs.</p> <p>Key features of LLP Act are as follows:</p> <ul style="list-style-type: none"> • LLP shall be a body corporate and a legal entity separate from its partners. It will have perpetual succession; like a corporation; • There shall not be any upper limit on number of partners in an LLP unlike an ordinary partnership firm where the maximum number of partners cannot exceed 20 (10 in case of banking); • While the LLP will be a separate legal entity, liable to the full extent of its assets, the liability of the partners would be limited to their agreed contribution to
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			<p>the LLP. Further, no partner would be liable on account of independent or unauthorized actions of other partners, thus allowing individual partners to be shielded from joint liability created by another partner's wrongful business decisions or misconduct;</p> <ul style="list-style-type: none"> • The framework of LLP is not restricted to professional services alone. Several business activities can be undertaken using the LLP structure. <p>Pre-requisites for registering an LLP</p> <ul style="list-style-type: none"> • Minimum 2 Partners (Individual or body corporate) • Minimum 2 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
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5.	Japan	Limited Liability Partnership Act	<p>The Japanese limited liability partnership is a relatively new Japanese entity form that was introduced in 2005. Formed by the Law Concerning Contracts for Limited Liability Business Partnerships“ and similar to the LLP form adopted by some countries in America and Europe, the LLP form is intended to be used by entrepreneurs or specialists for who are providing services in the fields of accounting, legal, design, IT, financial or similar knowledge based areas.</p> <p>Characteristics of the LLP entity form are as under:</p> <ul style="list-style-type: none"> • Limited liability for contributors of capital to the LLP („LLP Members“) up to the amount of their contribution. • Internal governance: The LLP Members themselves carry on the management of the LLP business, with flexibility to decide how profits and losses should be allocated between different LLP Members. • Taxation at the member level: LLP Members are taxed directly on the results of the LLP, avoiding double taxation through
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			<p>the imposition of corporate taxes at the LLP entity level.</p> <ul style="list-style-type: none"> • It is to be noted that some part of the business of lawyers, certified accountants, or qualified tax accountants cannot be carried out in LLP form and hence remains subject to unlimited liability. • The LLP is under an obligation to respond to requests for disclosure of the partnership contract and the financial statements of the LLP to creditors. • Measures to preserve the assets of the LLP include limitations on the type of capital that can be contributed to an LLP at the time of its establishment (LLP law article 31), responsibilities for the contribution of LLP members (under LLP law article 16), limitations on the types of contributions (under LLP law article 119), an obligation to separate the management of the assets of the partnership (under LLP law article 20), a prohibition on the transfer of
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			<p>claims against the intrinsic assets of each member to be compulsory transferred as a claim against the assets of the partnership (under LLP law article 22), and limitations on the distribution of partnership assets (under LLP law article 34).</p> <ul style="list-style-type: none">• Article 49 of the LLP law requires preferential settlement of debts of the partnership prior to the distribution of assets to members of the LLP even at the time of liquidation along with other methods of preserving creditors' interests. The LLP law does not determine the detailed provisions of the internal rules of the LLP. Rather, these are determined by the LLP Members themselves in agreement under the LLP contract.• The LLP Law requires all the LLP Members to participate in the carrying out of the LLP business and in the important decision-making activities of the business.
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			<ul style="list-style-type: none"> • It is not unusual for an LLP to raise borrowings at the time of its establishment to add to the contribution of the LLP Members. However in order to prevent inappropriate tax loss recognition and related tax avoidance, funds only investing for monetary return and not participating in the business are forbidden. Furthermore under LLP article 12 relating to such financing, either the agreement of all members of the LLP is required or, if a rule is established in the LLP contract, a majority of at least two thirds of the total number of LLP members. • It is clear from the individual income tax and corporate tax instructions that the Japanese taxation of an LLP is the same as that of a Japanese nin'ikumiai or civil law partnership.
6.	South Africa		<p>No legislation for LLP identified.</p> <p>Persons practicing in professions, such as attorneys and accountants who are otherwise unable to enjoy limited</p>

		<p>liability typically make use of section 53(b) of the Companies Act. Companies incorporated under section 53(b) are identified by the suffix "Incorporated" or "Inc". Certain interest groups are currently lobbying for the introduction of limited liability partnerships.</p>
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