

# **DISTINCTION BETWEEN PARTNERSHIP, LLP and PRIVATE LIMITED COMPANY**

**STUDY CIRCLE - V.P. SHINTRE & ASSOCIATES**

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# TYPES OF ENTITIES TO RUN A BUSINESS

*Study Circle Session - VP Shintre & Associates*

# **TYPES OF ENTITIES TO RUN A BUSINESS**

There are various types of entities to run a business

- Proprietorship
- Partnership
- Limited liability partnership
- Company

The factors to be taken into consideration for choosing the entity relevant for business are:

- Flexibility in conduct of business
- Extent of liability of management
- Taxation

# TYPES OF ENTITIES TO RUN A BUSINESS

**Factors to be taken into consideration while choosing entity to run business**

## **Flexibility in conduct of business**

More flexibility to conduct business in case of a proprietorship and partnership as compared to LLP or Company, since there are fewer regulatory compliances

## **Extent of Liability**

The liabilities in case of proprietorship and partnership unlimited in nature while in case of a LLP or Company the liability is limited in nature

## **Taxation**

In proprietorship, partnership and LLP the profits are taxed only once at the entity level, while in case of company the profits are taxed at entity level and again at the time of distribution

# **Distinction between Partnership, LLP & Private Ltd. Company**

# Nature of Entity

Particulars	Partnership	LLP	Company
<b>Legislation</b>	Partnership Act, 1932	Limited Liability Act, 2008	Companies Act, 2013
<b>Definition</b>	The section 4 of the Partnership Act defines a partnership 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'.	A LLP means a partnership formed and registered under the LLP Act	Company means a company incorporated under the Companies Act or under any previous company law

# Nature of Entity

Particulars	Partnership	LLP	Company
<b>Legal Existence</b>	No separate legal existence  Arises from Partnership Deed	Has a separate legal existence  Capable of suing and being sued, holding or disposing property etc.  Perpetual succession (any change in the partners of the LLP does not affect the existence or rights and liabilities of the LLP)	Similar to LLP
<b>Registered office</b>	Not required	Required	Required
<b>Voluntary Dissolution</b>	Consent of all parties is sufficient	Through a Tribunal	Through a Tribunal

# Additional Factors

Particulars	Partnership	LLP	Company
<b>Foreign Investment /Loans</b>	Not applicable	Allowed  FPI not allowed to invest ECB Loan cannot be raised	Allowed  (subject to fulfilment of other conditions)
<b>Taxation</b>	Single layer of taxation - Only profits are taxed while distribution is not taxed  Capital payouts are not taxed	Single layer of taxation - Only profits are taxed while distribution is not taxed  Capital payouts are not taxed	Two layer of taxation - Profits are taxed and dividend is also taxed  Capital payouts are taxed as Deemed Dividend
<b>ESOPs</b>	Not applicable	Not applicable	Can be issued



# Partners, Capital and Liabilities

Particulars	Partnership	LLP	Company
<b>Mutual Rights and Duties of Partners</b>	Governed by Partnership Deed and in absence thereof by Partnership Act	Governed by Limited liability Partnership agreement and in absence thereof by LLP Act	AOA, MOA
<b>Management</b>	Partners	Partners	Directors (as against shareholders)
<b>Capital</b>	Capital contribution	Capital contribution	Shares
<b>Capital withdrawal</b>	Ease of withdrawal	Ease of withdrawal	Can be done only through buyback of shares or capital reduction

# Partners, Capital and Liabilities

Particulars	Partnership	LLP	Company
<b>Liability</b>	<p>Jointly and Severally liable</p> <p>For the wrongful acts or omissions of other partners, done in course of business, which causes loss or damage to third persons</p>	<p>Limited Liability</p> <p>Not personally liable for obligation of LLP</p> <p>Not personally liable for the wrongful act or omission of any other partner of the LLP</p>	<p>Limited Liability similar to LLP</p>
<b>Agency</b>	<p>A Partner is treated as agent of the firm for the purposes of the business of the firm</p>	<p>Partner is treated as agent of the LLP but not of the other partners</p>	<p>Director is treated as agent of the company</p>

# Regulatory requirements

Particulars	Partnership	LLP	Company
<b>Registration</b>	Not mandatory However, to file a suit the registration is mandatory	Yes, registration is mandatory in order to incorporate a LLP	Similar to LLP
<b>Books of accounts and filing of annual returns</b>	Not mandatory	Mandatory to maintain books of accounts and also filing of Annual return is mandatory	Similar to LLP
<b>Meetings</b>	Not mandatory	Not mandatory	Mandatory  (Board of Directors meetings as well as shareholder meetings)
<b>Audit</b>	Not mandatory	Mandatory only if capital contribution is above Rs. 25 lakhs / Revenue is Rs. 40 lakhs	Mandatory

# THANK YOU

**Study Circle Session arranged by V.P. Shintre & Associates, Advocates**  
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