

17.13: Limited Liability Partnership (LLP)

Learning Objectives

- Define limited liability partnerships (LLP) as a form of business
- Discuss the advantages and disadvantages of LLPs

A **limited liability partnership (LLP)** is a partnership in which some or all partners (depending on the jurisdiction) have limited liabilities. It therefore exhibits elements of partnerships and corporations. In an LLP, one partner is not responsible or liable for another partner's misconduct or negligence.

In an LLP, some partners have a form of limited liability similar to that of the shareholders of a corporation. Some states require one partner to be a "general partner" with unlimited liability, meaning he/she is ultimately responsible for the debts of the business and for any lawsuits such as personal injury or breach of contract. Unlike corporate shareholders, the partners have the right to manage the business directly. In contrast, corporate shareholders have to elect a board of directors under the laws of various state charters. The board organizes itself (also under the laws of the various state charters) and hires corporate officers who, as "corporate" individuals, then have the legal responsibility to manage the corporation in the corporation's best interest. An LLP also has a different level of tax liability compared with that of a corporation.

As in a partnership or limited liability company (LLC), the profits of an LLP are allocated among the partners for tax purposes, avoiding the problem of "double taxation" often found in corporations.

Forming an LLP

Verify Eligibility Status. In the United States, each individual state has its own law governing the formation of LLPs. Although found in many business fields, the LLP is an especially popular form of organization among professionals such as lawyers, accountants, and architects. In California, New York, Oregon, and Nevada, LLPs can only be formed for such professional uses.

Choose a Business Name. When selecting a name for the LLP, generally the name (1) must be different from an existing LLP in your state, and (2) most states require the inclusion of "Limited Liability Partnership," "LLP," or another related abbreviation at the end of your business name.

Draft a Limited Liability Partnership Agreement. Although not required in every state, this agreement is strongly recommended. A limited liability partnership agreement should define each partner's role and responsibilities. It should clearly define the partners' assets and liability limitations. The agreement should also outline capital contributions, distribution of profits and losses, buyout agreements, expulsion or addition of partners, etc.

File a Certificate of Limited Liability Partnership. The drafting of an LLP agreement is optional; however all LLPs must file a certificate of limited liability partnership (sometimes called a certificate of registration as a limited liability partnership). The certificate of limited liability partnership is more general than the limited liability partnership agreement, as it does not detail responsibilities, capital contributions, buyouts, etc. The certificate requires the listing of your business's name and address, the names and contact information of the partners, and information on the registered agent of the LLP.

Obtain Licenses and Permits. Once your business is registered, you must obtain business licenses and permits. Regulations vary by industry, state and locality.

Announce Your Business. Some states, including Arizona and New York, require the extra step of publishing a statement in your local newspaper about your LLP formation.

LLP Taxes

The tax treatment for LLPs is similar to general partnerships, as discussed earlier. Profits and losses are passed through to the partners so the partners reflect them on their individual tax return.

Practice Question

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Advantages of an LLP

- **Single Taxation.** The credits and deductions of the company are passed through to partners to file on their individual tax returns. Credits and deductions are divided by the percentage of individual interest each partner has in the company.
- **Limited Liability.** The LLP structure protects individual limited partners from personal liability for negligent acts of other partners or employees not under their direct control. In addition, individual partners are not personally responsible for company debts or other obligations.
- **Flexibility.** LLPs provide the partners flexibility in business ownership. Partners have the ability to decide how they will individually contribute to business operations, both financially and physically. Management duties can be divided equally or unequally based on the experience of each partner. Partners who have a financial interest in the company can elect not to have any authority over business decisions but still maintain ownership rights based on their percentage interest in the company.

Disadvantages of an LLP

- **Duration .** The business life of a LLP is unstable because the partnership can be dissolved by agreement of the partners or upon the death or withdrawal of a partner. A limited liability partnership agreement can prevent dissolution if a partner dies or withdraws.
- **Limitation of Formation:** Unlike general partnerships, limited liability partnerships are not recognized as legal business structures in every state. Some states limit the creation of a limited liability partnership to professionals such as doctors or lawyers.
- **Partner Control.** If an LLP is formed without a limited liability partnership agreement, individual partners are not obligated to consult with other participants in certain business agreements. The fact that a partner can make business decisions without consulting the other partners can be problematic, to say the least.

? Practice Question

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