

Foreign Investment in Limited Liability Partnership (LLP)

Limited Liability Partnership means a partnership formed and registered under the Limited Liability Partnership Act, 2008. In India, LLP form of organization is growing rapidly owing to the flexibility in its structure and operation. With the liberalization of the foreign investment in LLP, such entities will now be able to expand their business by attracting foreign investment. This article covers the basic provisions governing foreign investment in LLP such as who is eligible to invest in LLP, criteria for LLP, reporting compliance etc.

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MODES OF INVESTMENT IN A LLP

Investment in Limited Liability Partnership (LLP) can be done in either of the two modes:

- Investment on Non-repatriation basis or
- Investment on Repatriation basis

INVESTMENT ON NON-REPATRIATION BASIS

- A NRI or an OCI, including a company, a trust and a partnership firm incorporated outside India and owned and controlled by NRIs or OCIs, may invest on non-repatriable basis by way of contribution to the capital of LLP without any limit.
- There will no pricing and reporting requirement as such investment is deemed to be domestic investment at par with the investment made by residents.
- Sectoral caps and conditionalities for FDI are not applicable to such investments.
- However, certain sectors not open for investment are:
 - Nidhi company
 - Agricultural or plantation activities
 - Construction of farm houses
 - Dealing in transfer of development rights
 - Real estate business (does not include development of townships, construction of residential or commercial premises, roads or bridges and Real Estate Investment Trusts (REITs) registered and regulated under the SEBI (REITs) Regulations, 2014).
- The amount of consideration shall be paid as inward remittance from abroad through banking channels or out of funds held in NRE/ FCNR(B)/ NRO account.
- The disinvestment proceeds of LLP shall be **credited only to the NRO account** of the investor, irrespective of the type of account from which the consideration was paid.
- The consideration for contribution to the capital of a LLP and the capital appreciation thereon **shall not** be allowed to be repatriated abroad.

INVESTMENT ON REPATRIATION BASIS

❖ ELIGIBILITY OF INVESTOR

A person resident outside India (other than a citizen of Pakistan or Bangladesh) or an entity incorporated outside India, (other than an entity in Pakistan or Bangladesh) is eligible to invest in LLP. However, the following persons are not eligible to invest in LLPs:

- Foreign Venture Capital Investor (FVCI)
- Foreign Portfolio Investor(FPI)

❖ **ELIGIBILITY OF LLP FOR ACCEPTING FOREIGN INVESTMENT**

- An LLP would be eligible to receive foreign investment if it is operating in sectors where 100% foreign investment is allowed under the automatic route and there are no FDI-linked performance conditions.
- LLPs engaged in following sectors/activities shall not be eligible to accept foreign investment:
 - Sectors which can accept 100% FDI under automatic route but are subject to FDI-linked performance related conditions.
 - Sectors which can accept less than 100% FDI under automatic route.
 - Sectors which can accept FDI under Government approval route.
 - Sectors ineligible to accept FDI
- Investment in LLP is subject to the compliance of the conditions of Limited Liability Partnership Act, 2008.

❖ **PRICING GUIDELINES**

- Investment in an LLP either by way of capital contribution or by way of acquisition or transfer of profit shares shall be more than or equal to the fair price as worked out with any valuation norm which is internationally accepted or adopted as per market practice. A valuation certificate to that effect has to be obtained from a Chartered Accountant or practicing Cost Accountant or an approved valuer from the panel maintained by the Central Government
- Incase of transfer of capital contribution or transfer of profit shares, transfer value shall be determined to be as follows:

| FROM | TO | TRANSFER VALUE SHOULD BE |
|--------------|--------------|--|
| Resident | Non-Resident | Equal to or more than the fair price of capital contribution/profit share of an LLP. |
| Non-Resident | Resident | Not more than the fair price of capital contribution/profit share of an LLP. |

❖ **CONVERSION FROM COMPANY TO LLP AND VICE VERSA**

- A company having foreign investment, operating in sectors where 100% FDI is permitted under the automatic route and there are no FDI-linked performance conditions, may be converted into a LLP under the automatic route.

- Similarly, a LLP having foreign investment, engaged in a sector where foreign investment up to 100% is permitted under the automatic route and there are no FDI-linked performance conditions, may be converted into a company under the automatic route.

❖ FUNDING/PAYMENTS

- Payment towards capital contribution of an LLP shall be made by way of an inward remittance through banking channels or out of funds held in NRE or FCNR(B) account.
- The disinvestment proceeds may be remitted outside India or may be credited to NRE or FCNR(B) account.
- An LLP is not eligible to obtain External Commercial Borrowings (RBI FAQ 5 on External Commercial Borrowings)

❖ REPORTING COMPLIANCES

ONE TIME

- **Form FDI-LLP(I)** has to be submitted within 30 days from the date of receipt of the amount of consideration along with the prescribed documents.
- **Form FDI-LLP(II)** has to be submitted within 60 days from the date of receipt of funds for disinvestment or transfer of capital contribution or profit share between a resident and a non-resident or vice versa.

RECURRING

- Submit Annual Return on Foreign Liabilities and Foreign Assets by 15th July.

GLOSSARY

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|---------|--|
| FCNR(B) | Foreign Currency Non-Resident Bank Account |
| FDI | Foreign Direct Investment |
| NRE | Non-Resident (External) Rupee Account |
| NRI | Non-Resident Indian |
| NRO | Non-Resident Ordinary Account |
| OCI | Overseas Citizen of India |

15th April, 2020

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