

India adopts limited liability partnership as business form

In Brief

India has enacted legislation permitting a business to operate as a limited liability partnership (hereafter, "LLP"). Effective January 9, 2009, the Limited Liability Partnership Act, 2008 (No. 6 of 2009) ("the Act"), enables a foreign law firm wishing to conduct a consultancy business in India to do so.

Discussion

The Act permits the establishment of LLPs to register and provide consulting services in India. Although a foreign law firm may not practice law in India, under the new LLP statute a firm may provide consulting services without obtaining permission. It is anticipated that the Central Government will prescribe rules governing the conduct of business by foreign LLPs.

Every LLP shall have at least two designated partners. Any individual or "body corporate" can be a partner in an Indian LLP. A body corporate has been defined to include an LLP (Indian or Foreign) and a foreign company, but specifically excludes a co-operative society. At least one of the designated partners must be a resident in India, i.e. a person who has stayed in India for a period of not less than one hundred and eighty-two days during the immediately preceding one year. The second designated partner may be a non-resident of India.

There are several requirements with respect to keeping the LLP's books and filing obligations, including having its accounts audited and preparing a statement of accounts and solvency to be filed with the Registrar of Companies ("ROC") after authentication by the designated partners. The LLP must also file an Annual Return with the ROC within sixty days of the end of the financial year.

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Law Firm Services

A firm may convert to an LLP provided all the partners of the firm become partners of the LLP. On registration as an LLP, the assets and liabilities of the firm shall be transferred to, and vest with, the LLP, and the firm shall be deemed to be dissolved, and if registered under the Indian Partnership Act, 1932, removed from the records maintained under the Indian Partnership Act.

The Act is silent on the taxability of an LLP. Our colleagues in PwC India have advised that the Income-tax Act, 1961 will need to be amended to provide guidance.

The legal case in India to determine the distinction between consulting services and the practice of law has yet to be decided. The case was remanded by the Indian Supreme Court to the Bombay High Court.

Our professionals at PwC have extensive experience assisting our clients with international partnership issues, including the establishment of foreign offices and compliance with foreign account and filing requirements. If we can assist your firm, please contact Stanley Kolodziejczak at 646-471-3160, Gregg Sincoff at 646-471-1335, or Nancy Regan at 646-471-6104.

Solicitation

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