

CHAPTER 4 - THE LIMITED LIABILITY PARTNERSHIP ACT, 2008

BACKGROUND AND AIM OF THE ACT

- The Parliament passed the Limited Liability Partnership Bill on 12th December, 2008 and the President of India has assented the bill on 7th January, 2009 and called as the Limited Liability Partnership Act, 2008, and many of its sections got enforced from 31st March 2009.
- This Act have been enacted to make provisions for the formation and regulation of Limited Liability Partnerships and for matters connected there with or incidental thereto.
- The LLP Act, 2008 has 81 sections and 4 schedules.
- The First schedule deals with mutual rights and duties of partners, as well limited liability partnership and its partners where there is absence of formal agreement with respect to them.
- The Second schedule deals with conversion of a firm into LLP.
- The Third schedule deals with conversion of a private company into LLP.
- The Fourth schedule deals with conversion of unlisted public company into LLP.
- The Ministry of Corporate Affairs (MCA) and the Registrar of companies (ROC) are entrusted with the task of administrating the LLP ACT, 2008.

- It is also to be noted that 'The Indian Partnership Act, 1932 is not applicable to LLPs.

- MEANING OF LLP.

- A LLP is a new form of legal business entity with Limited Liability.
- The LLP is a separate legal entity and, while the LLP itself will be liable for the full extent of its assets, the liability of the partners will be limited.
- Since LLP contains elements of both 'a corporate structure' as well as 'a partnership firm structure' LLP is called a hybrid between a company and partnership.

- characteristics of LLP

Following are the characteristics of a LLP:

1. LLP is a body corporate
2. Perpetual succession
3. Separate legal Entity
4. No mutual Agency
5. LLP Agreement : The LLP Act, 2008 provides flexibility to partner to devise the agreement as per their choice. In the absence of any such agreement, the mutual rights and duties shall be governed by the provisions of the LLP Act, 2008.
6. Artificial legal Person.

7. Common seal : It is not mandatory for a LLP to have a common seal. It shall remain under the custody of some responsible official and it shall be affixed in the presence of at least 2 designated partners of the LLP.
8. Limited Liability
9. Management of Business : The Partners in the LLP are entitled to manage the business of LLP. But only the designated partners are responsible for legal compliances.
10. Minimum and maximum number of partners : Every LLP shall have least two partners and shall also have at least 2 individuals as designated partners, of whom at least one shall be resident in India. There is no maximum limit on the partners in LLP.
11. Business for profit only.
12. Investigation : The central Government shall have powers to investigate the affairs of an LLP by appointment of competence authority for the purpose.
13. Compromise or Arrangement : Any compromise or arrangement including merger and amalgamation of LLPs shall be in accordance with the provisions of LLP Act, 2008.
14. Conversion into LLP : A firm, private company or an unlisted public company would be allowed to be converted into LLP in accordance with the provisions of LLP Act, 2008.
15. E-Filing of Documents .
16. Foreign LLPs : Section 2(1)(m) defines foreign limited liability partnership "as a limited liability

partnership formed, incorporated, or registered outside India which established a place of business within India." Foreign LLP can become a partner in an Indian LLP.

- INCORPORATION OF LLP

➤ Essential elements to incorporate LLP - under the LLP Act, 2008, the following elements are very essential to form a LLP in India:

- (i) To complete and submit incorporation document in the form prescribed with the registrar electronically;
- (ii) To have at least two partners for incorporation of LLP [Individual or body corporate];
- (iii) To have registered office in India to which all communications will be made and received;
- (iv) To appoint minimum two individuals as designated partners who will be responsible for number of duties including doing of all acts, matters and things as are required to be done by the LLP. Atleast one of them should be resident in India.
- (v) A person or nominee of body corporate intending to be appointed as designated partner of LLP should hold a Designated partner identification Number (DPIN) allotted by MCA.
- (vi) To execute a partnership agreement between the partners interse or between the LLP and its partners. In the absence of any agreement the provisions as set out in First schedule of LLP Act, 2008 will be applied.

(vii) LLP Name.

➤ Limited Liability Partnerships are bodies corporate and must be registered with the Registrar of LLP after following the provisions specified in the LLP Act, in a similar way of getting up a company with distinct name. The LLP cannot have the same name with any other LLP, Partnership firm or company.

To create a LLP proper formation documents must be filed with the registrar along with the necessary filing fees.

➤ Process:

Deciding Partners and designated partners



obtaining DPIN and Digital signature certificate (DSC)



checking the availability of names

The applicant has to file e-form 1, for ascertaining availability and reservation of the name of a LLP business (upto 6 choices can be indicated)



Drafting of LLP Agreement.

contents of LLP Agreements :

1. Name of LLP
 2. Name & address of Partners and Designated Partners .
 3. Form of contribution and interest on contribution .
 4. Profit sharing ratio .
 5. Remuneration of Partners .
 6. Rights & Duties of Partners .
 7. Proposed Business .
 8. Rules for governing LLP .
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Electronic filing of some documents

After reserving a name , user has to file e-form 2 for incorporating a new LLP .

e-form 2 contains the details of LLP proposed to be incorporated , partners and designated partners details and consent of the partners and designated partners to act as and designated partners .

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Issuing certificate of incorporation along with LLPIN (Limited Liability Partnership Identification Number)

- Execution of LLP Agreement is mandatory as per section 23 of the Act . LLP Agreement is required to be filed with the registrar in e-form 3 within 30 days of incorporation of LLP .