

## THE LIMITED LIABILITY PARTNERSHIP ACT, 2008

<b>The Parliament passed the bill</b>	12 <sup>th</sup> December, 2008
<b>The President of India has assented the Bill</b>	7 <sup>th</sup> January, 2009
<b>Act came into force</b>	31 <sup>st</sup> March 2009

### The LLP Act, 2008 has 81 sections and 4 schedules

**The First Schedule** Mutual rights and duties of partners, as well limited liability partnership and its partners where there is absence of a formal agreement with respect to them.

**The Second Schedule** Conversion of a firm into LLP

**The Third Schedule** Conversion of a private company into LLP

**The Fourth Schedule** Conversion of unlisted public company into LLP

The provisions of the **Indian Partnership Act, 1932** shall not apply to a LLP. LLP is an alternative corporate business form that gives the benefits of **limited liability of a company** and the **flexibility of a partnership**.

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 a partnership**.

Term	Section	Definition
<b>Body Corporate</b>	<b>Section 2(1)(d)</b>	It means a company as defined in section 3 of the Companies Act, 1956 (now Companies Act, 2013) and includes— (i) a LLP registered under this Act; (ii) a LLP incorporated outside India; and (iii) a company incorporated outside India, but does not include— (i) a corporation sole; (ii) a co-operative society registered under any law for the time being in force; and (iii) any other body corporate which the Central Government may, by notification in the Official Gazette, specify in this behalf
<b>Business</b>	<b>Section 2(1)(e)</b>	"Business" includes every trade, profession, service and occupation
<b>Designated Partner</b>	<b>Section 2(1)(j)</b>	"Designated partner" means any partner designated as such pursuant to section 7.
<b>Entity</b>	<b>Section 2(1)(k)</b>	"Entity" means any body corporate and includes, for the purposes of sections 18, 46, 47, 48, 49, 50, 52 and 53, a firm setup under the Indian Partnership Act, 1932.
<b>Financial Year</b>	<b>Section 2(1)(l)</b>	"Financial year", in relation to a LLP, means the period from the 1st day of April of a year to the 31st day of March of the following year. However, in the case of a LLP incorporated after the 30th day of September of a year, the financial year may end on the 31st day of March of the year next following that year.

		The Income Tax department has prescribed uniform financial year from 1st April to 31st March of next year. In keeping with the Income tax law, the financial year for LLP should always be from 1st April to 31st March each year.
<b>Foreign LLP</b>	<b>Section 2(1)(m)</b>	It means a LLP formed, incorporated or registered outside India which establishes a place of business within India
<b>Limited liability partnership</b>	<b>Section 2(1)(n)</b>	Limited Liability Partnership means a partnership formed and registered under this Act.
<b>Limited Liability partnership agreement</b>	<b>Section 2(1)(o)</b>	It means any written agreement between the partners of the LLP or between the LLP and its partners which determines the mutual rights and duties of the partners and their rights and duties in relation to that LLP
<b>Partner</b>	<b>Section 2(1)(q)</b>	Partner, in relation to a LLP, means any person who becomes a partner in the LLP in accordance with the LLP agreement

### Who can be a partner in LLP? (Section 5)

Any individual or body corporate may be a partner in a LLP except

- a. Unsound mind
- b. Undischarged Insolvent
- c. Applied to be adjudicated as an insolvent and his application is pending

*Note: A minor also cannot be a member/beneficiary in LLP*

### Minimum number of partners (Section 6)

- (i) Every LLP shall have at least two partners.
- (ii) If the number of partners reduced below two and carries on business for more than six months, the person, who is the only partner, shall be liable personally for the obligations incurred during that period.

### Designated partners (Section 7):

- Every LLP shall have at least two designated partners and at least one of them shall be a resident in India.
- Nominees of body corporate can also act as designated partners.
- Resident in India: a person who has stayed in India for a period of not less than 182 days during the immediately preceding one year.

### Features of LLP

1. **LLP is a body corporate:** Section 2(1)(d) of the LLP Act, 2008 provides that a LLP is a body corporate formed and incorporated under this Act and is a legal entity separate from that of its partners and shall have perpetual succession.

Therefore, any change in the partners of a LLP shall not affect the existence, rights or liabilities of the LLP. Section 3 of LLP Act provides that a LLP is a body corporate formed and incorporated under this Act and is a legal entity separate from that of its partners.

2. **Perpetual Succession:** The LLP can continue its existence irrespective of changes in partners. Death, insanity, retirement or insolvency of partners has no impact on the existence of LLP. It is capable of entering into contracts and holding property in its own name.
3. **Separate Legal Entity:** The LLP is a separate legal entity, is liable to the full extent of its assets but liability of the partners is limited to their agreed contribution in the LLP. In other words, creditors of LLP shall be the creditors of LLP alone.
4. **Mutual Agency:** Further, no partner is liable on account of the independent or unauthorized actions of other partners, thus individual partners are shielded from joint liability created by another partner's wrongful business decisions or misconduct. In other words, all partners will be the agents of the LLP alone. No one partner can bind the other partner by his acts.
5. **LLP Agreement:** Mutual rights and duties of the partners within a LLP are governed by an agreement between the partners. 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:** A LLP is an artificial legal person because it is created by a legal process and is clothed with all rights of an individual. It can do everything which any natural person can do, except of course that, it cannot be sent to jail, cannot take an oath, cannot marry or get divorce nor can it practice a learned profession like CA or Medicine. A LLP is invisible, intangible, immortal (it can be dissolved by law alone) but not fictitious because it really exists.
7. **Common Seal:** A LLP being an artificial person can act through its partners and designated partners. LLP may have a common seal, if it decides to have one [Section 14(c)]. Thus, 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:** Every partner of a LLP is, for the purpose of the business of LLP, the agent of the LLP, but not of other partners (Section 26). The liability of the partners will be limited to their agreed contribution in the LLP. Such contribution may be of tangible or intangible nature or both.
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:** The essential requirement for forming LLP is carrying on a lawful business with a view to earn profit. Thus LLP cannot be formed for charitable or non-economic purpose.




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 agreements including merger and amalgamation of LLPs shall be in accordance with the provisions of the 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:** Every form or application of document required to be filed or delivered under the act and rules made thereunder, shall be filed in computer readable electronic form on its website [www.mca.gov.in](http://www.mca.gov.in) and authenticated by a partner or designated partner of LLP by the use of electronic or digital signature.
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 as place of business within India”. Foreign LLP can become a partner in an Indian LLP.

### Advantages of LLP form-

- ✚ Organized and operates on the basis of an agreement.
- ✚ Provides flexibility without imposing detailed legal and procedural requirements.
- ✚ Easy to form
- ✚ All partners enjoy limited liability
- ✚ Flexible capital structure
- ✚ Easy to dissolve

### INCORPORATION OF LLP

LLP incorporation process consist of following Steps-

- |  |   |  |
|--|---|--|
| <ol style="list-style-type: none"> <li>1. Application for Designated Partner Identification Number (DPIN)</li> </ol>                               |  | <ul style="list-style-type: none"> <li>• The first step to incorporate Limited Liability Partnership (LLP) is reservation of name of LLP.</li> <li>• Applicant has to file e-Form 1, for ascertaining availability and reservation of the name of a LLP business.</li> </ul>   |
| <ol style="list-style-type: none"> <li>2. Register for Digital Signature Certificate (DSC)</li> </ol>  |  | <ul style="list-style-type: none"> <li>• After reserving a name, user has to file e- Form 2 for incorporating a new Limited Liability Partnership (LLP).</li> <li>• e-Form 2 contains the details of LLP proposed to be incorporated, partners'/ designated partners' details and consent of the partners/designated partners to act as partners/designated partners.</li> </ul> |
| <ol style="list-style-type: none"> <li>3. New user registration in LLP portal</li> </ol>   |  | <ul style="list-style-type: none"> <li>• Execution of LLP Agreement is mandatory as per Section 23 of the Act.</li> <li>• LLP Agreement is required to be filed with the registrar in e-Form 3 within 30 days of incorporation of LLP.</li> </ul>  |
| <ol style="list-style-type: none"> <li>4. Name Approval</li> <li>5. Incorporation Document and other document</li> <li>6. LLP Agreement</li> </ol> |   |  |

### **Name of LLP (Section 15)**

- Every limited liability partnership shall have either the words “limited liability partnership” or the acronym “LLP” as the last words of its name.
- No LLP shall be registered by a name which, in the opinion of the Central Government is—
  - a) Undesirable; or
  - b) Identical or too nearly resembles to that of any other partnership firm or LLP or body corporate or a trade mark

### **Name Reservation (Section 16)**

The application for name approval should be made in E-Form 1 and if the name is approved by the registrar, he shall reserve the name for **3 months** from the date of intimation.

### **Change in Name (Section 17)**

- The Central Government may direct LLP to change its name if it is undesirable to central government or identical or too nearly resembles to that of any other partnership firm or LLP or body corporate or a trade mark.
- LLP shall comply with the said direction within 3 months after the date of the direction.
- Any LLP which fails to comply, shall be punishable with fine which shall not be less than 10,000 but which may extend to 5 Lakhs
- The designated partner of such LLP shall be punishable with fine which shall not be less than 10,000 but which may extend to 1 Lakh

### **Incorporation document (Section 11)**

For a LLP to be incorporated, the incorporation document shall be filed in such manner and with such fees. The incorporation document shall state the —

- a) Name of the LLP
- b) Proposed business of the LLP
- c) Address of the registered office of the LLP
- d) Name and address of each of the persons who are to be partners of the LLP on incorporation
- e) Name and address of the persons who are to be designated partners of the LLP on incorporation
- f) Other information

### **Filing of statement**

A statement shall be filed along with the incorporation document

- Made by either an advocate, or a Company Secretary or a Chartered Accountant or a Cost Accountant,
- And by anyone who subscribed his name to the incorporation document,
- That all the requirements of this Act and the rules made thereunder have been complied with, in respect of incorporation and matters precedent and incidental thereto.

If a person makes a statement which he—

- a) Knows to be false; or
- b) Does not believe to be true, Shall be punishable
  - With imprisonment for a term which may extend to 2 years and
  - With fine which shall not be less than 10,000 but which may extend to 5 Lakhs.

### **Incorporation by registration (Section 12)**

When the legal requirements have been complied with, the Registrar shall, within a period of 14 days—

- a) Register the incorporation document; and
- b) Give a certificate that the LLP is incorporated by the name specified therein.

**The certificate shall be conclusive evidence that the LLP is incorporated**

### **Effect of Incorporation of LLP (Section 14)**

On registration, a limited liability partnership shall, by its name, be capable of-

- Suing and being sued;
- Acquiring, owning, holding and developing or disposing of property, whether movable or immovable, tangible or intangible;
- Having a common seal, if it decides to have one; and
- Doing and suffering such other acts and things as bodies corporate may lawfully do and suffer

### **Change in registered office of LLP**

- Every LLP shall have a registered office
- A LLP may change the place of its registered office and file the notice of such change with the Registrar and any such change shall take effect only upon such filing.
- If the LLP contravenes any provisions of this section, the LLP and its every partner shall be punishable with fine which shall not be less than 2,000 but which may extend to 25,000.

### **Partners and their relations (Section 23)**

- The mutual rights and duties between partners of LLP and Between LLP and partners are governed by LLP agreement
- LLP agreement and its further changes should be filed with registrar
- An agreement in writing made before the incorporation of a LLP may impose obligations on the LLP, provided such agreement is ratified by all the partners after the incorporation of the LLP
- In the absence of agreement, schedule 1 will be applicable

### **Cessation of a partner (Section 24)**

A person may cease to be a partner of LLP in two ways

1. Voluntary Cessation
2. Involuntary Cessation

**A person ceased to be a partner of LLP is called Former Partner**

### **Voluntary Cessation**

A person may cease to be a partner of a LLP

- a) In accordance with an agreement with the other partners
- b) By giving a notice in writing of not less than 30 days to the other partners of his intention to resign as partner.

### **Involuntary Cessation**

A person shall cease to be a partner of a LLP—

- (a) On his death or dissolution of the LLP
- (b) If he is declared to be of unsound mind by a competent court
- (c) If he has applied to be adjudged as an insolvent or declared as an insolvent.

### **Right of Former Partner**

Former partner shall be entitled to receive from the LLP—

- (a) An amount equal to the capital contribution
- (b) His right to share in the accumulated profits of the LLP, after the deduction of accumulated losses

### **Liability of Former Partner**

Former partner will be regarded as still being a partner of the LLP to a third party unless the third party has—

- (a) Notice that the former partner has ceased to be a partner of the LLP
- (b) Notice that the former partner has ceased to be a partner of the LLP has been delivered to the Registrar.

The former partner will not get discharged from any obligation to the LLP or to the other partners or to any other person which he incurred while being a partner.

A former partner or a person entitled to his share in consequence of the death or insolvency of the former partner shall not have any right to interfere in the management of the LLP.

### **Registration of changes (Section 25)**

A LLP shall file a notice with the Registrar within 30 days when a person becomes or ceases to be a partner. If it relates to an incoming partner, it shall contain a statement by such partner that he consents to becoming a partner, signed by him.

### **Change in partner's name or address**

Every partner shall inform the LLP of any change in his name or address within a period of 15 days of such change. Where there is any change in the name or address of a partner, LLP shall file a notice with the Registrar within 30 days of such change.

If the LLP or any partner contravenes the provisions the LLP and every designated partner of the LLP shall be punishable with fine which shall not be less than 2,000 but which may extend to 25,000.

### **Notice by Partner to Registrar**

- Any person who ceases to be a partner of a LLP may himself file the notice with the Registrar, if he has reasonable cause to believe that the LLP may not file the notice with the Registrar.
- The Registrar shall obtain a confirmation to this effect from the LLP unless the LLP has also led such notice.
- Where no confirmation is given by the LLP within 15 days, the registrar shall register the notice made by a person ceasing to be a partner under this section.

### **Liability of LLP and Partner (Section 26)**

Every partner of a LLP is the agent of the LLP, but not of other partners

### **Extent of liability of LLP to third party (Section 27)**

An obligation of the LLP whether arising in contract or otherwise, shall be solely the obligation of the LLP. The liabilities of the LLP shall be met out of the property of the LLP.

A LLP is not bound by anything done by a partner in dealing with a person if the partner in fact has no authority to act for the LLP in doing a particular act and the person -

- Knows that he has no authority
- Does not know or believe him to be a partner of the LLP.

The LLP is liable if a partner of a LLP is liable to any person as a result of a wrongful act or omission on his part in the course of the business of the LLP or with its authority

### **Extent of liability of Partner**

A partner is not personally liable, directly or indirectly for an obligation of LLP solely by reason of being a partner of the LLP. But, a partner is personal liable for his own wrongful act or omission. (Section 28)

Where after a partner's death the business is continued in the same LLP name, the continued use of that name or of the deceased partner's name as a part thereof shall not of itself make his legal representative or his estate liable for any act of the LLP done after his death. (Section 29)

### **Holding out (Section 29)**

Any person, who by words spoken or written or by conduct,

- Represents himself, or
- Knowingly permits himself to be represented

To be a partner in a LLP, is liable to any person who has on the faith of any such representation given credit to the LLP.

Where any credit is received by the LLP as a result of such representation, the LLP shall be liable to the extent of credit received by it or any financial benefit derived thereon.

### **Unlimited liability in case of fraud (Section 30)**

In case of Fraud, the liability of the LLP and partners who acted with intent to defraud creditors or for any fraudulent purpose shall be unlimited for all or any of the debts or other liabilities of the LLP.

**If such act by partner was without the knowledge or the authority of the LLP, the LLP will not be liable.**

In case of fraud, the party shall be punishable with

- Imprisonment for a term which may extend to 2 years and
- With fine which shall not be less than 50,000 but which may extend to 5 Lakhs.

Where a LLP or any partner or designated partner or employee of such LLP has conducted the affairs of the LLP in a fraudulent manner shall be liable to pay compensation to any person who has suffered any loss or damage by reason of such conduct.

**LLP shall not be liable if any such partner or designated partner or employee has acted fraudulently without knowledge of the LLP**

### **Whistle blowing (Section 31)**

The Court or Tribunal may reduce or waive any penalty against any partner or employee of a LLP, if it is satisfied that—

- ♦ Such partner or employee of a LLP has provided useful information during investigation of such LLP; or
- ♦ When any information given by any partner or employee (whether or not during investigation) leads to LLP or any partner or employee of such LLP being convicted under this Act or any other Act.



No partner or employee of any LLP may be discharged, demoted, suspended, threatened, harassed or in any other manner discriminated against the terms and conditions of his LLP or employment merely because of his providing information or causing information to be provided.

### **Maintenance of books of account, other records and audit, etc. (Section 34)**

The LLP shall maintain such proper books of account on cash basis or accrual basis and according to double entry system of accounting and shall maintain the same at its registered office

Every LLP shall, within a period of 6 months from the end of each financial year, prepare and file with registrar, a Statement of Account and Solvency signed by the designated partners of the LLP.

**The accounts of LLP shall be audited in accordance with such rules as may be prescribed.**

### **Annual return (Section 35)**

Every LLP shall file an annual return duly authenticated with the Registrar within 60 days of closure of its financial year. The LLP contra-distinct from Partnership Act, 1932 has prescribed the filing of Annual Return in accordance with Companies Act, 2013.

Any LLP which fails to comply with the provisions of these sections shall be punishable with fine which shall not be less than 25,000 which may extend to 5 Lakhs  
Every designated partner of such LLP shall be punishable with fine which shall not be less than 10,000 which may extend to 1 Lakh.

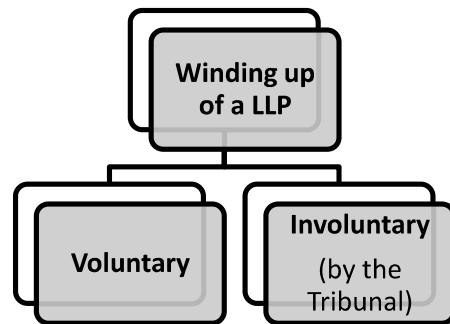
### **CONVERSION INTO LLP (Section 58)**

- ★ If the Registrar is satisfied that a firm, private company or an unlisted public company, has complied with the provisions of the various Schedules, provisions of this Act and the rules made for conversion to LLP, he will register the documents and issue a certificate of registration
- ★ The LLP shall, within 15 days of the date of registration, inform the concerned Registrar of Firms or Registrar of Companies, about the conversion and of the particulars of the LLP
- ★ Upon such conversion, the partners of the firm, the shareholders of private company or unlisted public company will be converted to the partners of LLP.

### **Effect of Registration**

- ★ All tangible (movable or immovable) and intangible property, all assets, interests, rights, privileges, liabilities, obligations and the whole of the undertaking of the firm or the company shall be transferred to the limited liability partnership without further assurance, act or deed
- ★ The firm or the company shall be deemed to be dissolved and removed from the records of the Registrar of Firms or Registrar of Companies.

## Winding up and dissolution (Section 63)



### Voluntary winding up

Voluntary winding up happens when the partners decide amongst themselves to discontinue and close the LLP

### Involuntary winding up (by Tribunal - Section 64)

A LLP may be wound up by the Tribunal:

- a) If the LLP decides that LLP be wound up by the Tribunal
- b) If, for a period of more than six months, the number of partners of the LLP is reduced below two
- c) If the LLP is unable to pay its debts
- d) If the LLP has acted against the interests of the sovereignty and integrity of India, the security of the State or public order
- e) If the LLP has made a default in filing with the Registrar the Statement of Account and Solvency or annual return for any five consecutive financial years
- f) If the Tribunal is of the opinion that it is just and equitable that the LLP be wound up.

The Central Government may make rules for the provisions in relation to winding up and dissolution of LLP (Section 65)

### MISCELLANEOUS

- ❖ A partner who lends money to LLP has the same rights and obligations with respect to the loan or other transactions as a person who is not a partner.
- ❖ The Central Government may direct that any of the provisions of the Companies Act shall apply to any LLP with or without exception, modification and adaptation, as may be specified.
- ❖ A copy of or an extract from any document electronically filed with or submitted to the Registrar or any information which is supplied or issued by the Registrar and certified through affixing digital signature, in any proceedings, be admissible in evidence as of equal validity with the original document.
- ❖ Any document or return required to be filed or registered under this
- ❖ Act with the Registrar is not filed or registered in time may be filed or registered after that time up to a period of 300 days on payment of additional fee of 100 for every day of such delay.

LLP	PARTNERSHIP FIRM
The Limited Liability Partnership Act, 2008	The Indian Partnership Act, 1932
It is a body corporate	It is not a body corporate
Separate legal entity	No separate legal entity
Created by a legal process called registration	It is created by an agreement between the partners
Registration is mandatory	Registration is voluntary
Perpetual succession	No perpetual succession
Name of the LLP to contain the word limited liability partnership (LLP) as suffix	No such guidelines
Liability of each partner is limited	Liability of each partner is unlimited
No Mutual agency	Mutual agency
At least two designated partners	There is no such provision
It may have common seal	There is no such concept
Only designated partners are responsible for all the compliances	All partners are responsible for all the compliances
LLP is required to file annual statement of accounts & solvency and annual return	Partnership firm is not required to file any annual document
Foreign nationals can become a partner in a LLP	Foreign nationals cannot become a partner in a partnership firm
Minor cannot be admitted to the benefits of LLP	Minor can be admitted to the benefits of the partnership

LLP	COMPANY
The Limited Liability Partnership Act, 2008	The Companies Act, 2013
The persons who contribute to LLP are known as partners of the LLP	The persons who invest the money in the shares are known as members of the company
The internal governance structure of a LLP is governed by contract agreement between the partners	The internal governance structure of a company is regulated by statute
Name of the LLP to contain the word "Limited Liability partnership" or "LLP" as suffix	Name of the public company to contain the word "limited" and Pvt. Co. to contain the word "Private limited" as suffix.
Minimum – 2 members Maximum – No such limit	Private company: Minimum – 2 members Maximum 200 members Public company: Minimum – 7 members Maximum – No such limit
Liability of a partners is limited to the extent of agreed contribution	Liability of a member is limited to the amount unpaid on the shares held by them.
The business of the company managed by the partners	The affairs of the company are managed by board of directors
Minimum 2 designated partners	Pvt. Co. – 2 directors Public co. – 3 directors

**"Strive for progress, not perfection."**