

Chapter 5 - The Limited Liability Partnership Act, 2008

Introduction :- The Ministry of Law and Justice on 7th January 2009 notified the limited liability Partnership Act 2008.

The Parliament passed the limited liability Partnership Bill on 19th December, 2008 and the President of India has assented the Bill on 7th January, 2009 and called as the limited liability Partnership Act, 2008. The LLP Act, 2008 is applicable to the whole of India.

The LLP Act, 2008 has 81 Section and 4 Schedules.

The first Schedule deals :- Mutual right and duties of partners between limited liability partnership and its partners where there is absence of formal agreement with respect to them.

The second Schedule :- Deal with Conversion of a firm into LLP.

The Third Schedule :- Deal with Conversion of a Private Co. into LLP.

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The fourth Schedule :- Deal with conversion of
Unlisted public Co. into LLP.

Administration of Act -
IRF < The Ministry of Corporate Affairs (MCA)
+
The Registrar of Companies (ROC)

CG - Framing of the rules, amendments in CG

The Companies Act 2013 → Registrar of Companies (RoC)
The Indian Partnership Act 1932, → Registrar
of firms (RoF)
The Limited Liability Partnership Act, 2008 → Registrar
of Companies (RoC)

The Limited Liability Act 2008 has been
amended through the Limited Liability
Partnership (Amendment) Act 2021 dated 13th
August, 2021.

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

Non-applicability of the Indian Partnership
Act 1932 (Section 4) :- The provisions of
the Indian Partnership Act 1932, shall
not apply to a LLP.

Need of new form of Limited liability Partnership

- ⇒ Owing to flexibility in its structure and operation
- ⇒ The LLP is a suitable vehicle for small enterprises and for investment by venture capital.

New form → Alternative Corporate business vehicle →
LLP is a HYBRID system

Benefit of Company	Benefits of Partnership firm
Body Corporate	flexibility
Limited liability	Agreement
perpetual Succession	Easy to create
Separate legal Entity	easy to dissolve
Artificial legal person	Compliance are less

LLP has taken advantages of both the form of Organisation

Meaning AND Concept

A LLP is a new form of legal business entity with limited liability.

It is an alternative corporate business vehicle that not only gives the benefits of limited liability at low compliance cost

but allows its partners the flexibility of organising their internal structure as a traditional.

The LLP is a separate legal entity. While the LLP itself will be liable for the full extent of its assets, the liability of the partners will be limited.

It gives 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.

Advantages of LLP

- Is organized and operates on the basis of an agreement
- Provides flexibility without imposing detailed legal and procedural
- Easy to form
- All partners enjoy limited liability
- flexible capital structure
- Easy to dissolve

Important Definitions

1.) Body Corporate [(Section 2(1)(d)] :- It

A Body Corporate can become a partner in LLP. So we need to understand what is a Body Corporate?

It means a company as defined in section 3 of the Act and includes -

- i.) A Limited Liability Partnership registered under this Act.
- ii.) A LLP incorporated outside India.
- 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.
- iii.) Any other body corporate (not being a company as defined in section 3 of the Companies Act, 1956 or a limited liability partnership as defined in this Act), which the Central Government may, by notification in the official Gazette, specify in this behalf.

2) Business [Section 2(1)(e)] :- A

"Business" includes every trade, profession, service and occupation. LLP can't be formed for CHARITABLE PURPOSE Only Bdit.

3) Financial Year [Section 2(4)(I)] :- A+

The Period from -

Regular Case :- The 1st April to 31st March of the following year.

SPecial Case :- LLP incorporated after the 30th September of a year - the financial year may end on 31st March of the year next following that year

Example 1 :- If a LLP has been incorporated on 15th October, 2019, then its financial year may be from 15th October, 2019 to 31st March, 2021.

4) Foreign LLP [Section 2(1)(m)] :- A+

It means a LLP formed, incorporated or registered outside India, which establishes a place of business with in India.

Formed / Incor. / Reg	POB	Foreign LLP
In India	Within India	No (Normal LLP)
Outside "	"	Yes
"	Outside India	No
In "	"	No (Normal LLP)

Small LLP [Section 2(1)(ta)] :- A++

It means a limited liability partnership (satisfy both the conditions)

a) Contribution of which does not exceed 25 lac rupees or Max not exceeding 5 crores (CG has power to increase it till this figure) as may be described.

b) Turnover of which :

i) as per the statement of Accounts and solvency for the immediately preceding financial year.

ii) Does not exceed 40 lac rupees or max 50 crores (CG has power to increase it till this figure) as may be described.

c) Which meets such other requirement as may be prescribed and fulfils such terms and condition as may be prescribed.

Non-applicability of the Indian Partnership Act, 1932 (Section 4)

Save as otherwise provided, the provisions of the Indian Partnership Act, 1932 shall not apply to a LLP.

Partners (Section 5) A

Any individual or body corporate may be a partner in a LLP. However, an individual shall not be capable of becoming a partner of a LLP, if

- i) he has been found to be of unsound mind by a court of competent jurisdiction and the finding is in force
- ii) he is an undischarged insolvent
- iii) he has applied to be adjudicated as an insolvent and his application is pending.

Minimum number of partners (Section 6) A

- i.) Every LLP shall have at least two partners.
- ii.) If at any time the number of partners of a LLP is reduced below two.
- iii.) The LLP carries on business for more than six months while the number is so reduced
- iv.) The person, who is the only partner of the LLP during the time that it so carries on business after these six months.

has the knowledge of the fact that it is carrying on business with him alone, shall be liable personally for the obligations of the LLP incurred during that period.

Designated partner (Section 7) A

- 1.) Every LLP have at least two designated partners
 - a.) who are individuals and
 - b.) at least one of them shall be a resident in india (ROI).

- 2.) If in LLP :- All the Partners are body corporate or in which one or more partners are individuals and bodies corporate (combination)-

At least two individuals who are partners of such LLP or nominees of such bodies corporate shall act as designated partners.

- 3.) Resident in India :- A person who has stayed in India for a period of not less than 120 days during the financial year.

Mutual Agency :- No partner is liable on or unauthorized account of the independent action of other partners, thus, individual partners are shielded from joint liability created by another partner's wrongful business decision 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.

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.

Business for Profit Only :- The essential requirement for forming LLP is carrying on a lawful business with a view to earn. Thus LLP cannot be formed for charitable or non-economic purpose.

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.

Incorporation document (Section 11)

The most important document need for registration is the incorporation document.

LLP's Partners → Registrar
Incorporation Document
Statement
Prescribed fees

1.) For a LLP to be incorporated

- a) Two or more persons associated for carrying on a lawful business with a view to profit shall subscribe their names to an incorporation document.
- b) The incorporation document shall be filed in such manner and with such fees, as may be prescribed with the Registrar of the state in which the registrar office of the LLP is to be situated
- c) Statement to be filed
 - i.) There shall be filed along with the incorporation document a statement in the prescribed form,
 - ii.) Made by either an advocate, or a company secretary or a Chartered Accountant or

a Cost Accountant, who is engaged in the formation of the LLP.

By Any One who subscribed his name to the incorporation document, that all the requirements of this Act and the rules made in respect of incorporation and matters precedent and incidental thereto.

2.) The incorporation document shall know Your Partner
(14P)

- a) Be in a form as may be prescribed.
- b) State the name of the LLP.
- c) State the proposed business of the LLP.
- d) State the address of the registered office of the LLP.
- e) State the name and address of each of the persons who are to be partners of the LLP on incorporation.
- f) State the name and address of the persons who are to be designated partners of the LLP on incorporation.
- g) Contain such other information concerning the proposed LLP as may be prescribed.

3.) If a person makes a statement as discussed above which he -

- a) knows to be false
- 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 Lacs

Incorporation by registration (Section 12) :-

1.) When the requirements imposed by clauses (b) and (c) of sub-section (1) section 11 have been complied with,

The Registrar shall retain the incorporation document and he shall, within a period of 14 days

a.) Registrar the incorporation document.

b.) Give a certificate that the LLP is incorporated by the name specified therein.

2.) The Registrar may accept the statement delivered under clause (c) of sub-section (1) of section 11 as sufficient evidence that the requirement imposed by clause (a) of that sub-section has been complied

3.) The certificate issued under clause (b) of sub-section (1) shall be signed by the Registrar and authenticated by his official seal

4.) The certificate shall be conclusive evidence that the LLP is incorporated by the name specified therein.

Registered Office of LLP And Change Therein (Section 13):

- 1) Every LLP shall have a registered office to which all communications and notices may be addressed and where they shall be received.
- 2) A document may be served on a LLP or a partner or designated partner thereof by sending it by post under a certificate of posting or by registered post or by any other address in manner, as may be prescribed, at registered office and any other address specifically declared by the LLP for the purpose in such form and manner as may be prescribed.
- 3) A LLP may change the place of its registered office and file the notice of such change with the Registrar in such form and manner and subject to such conditions as may be prescribed and any such change shall take effect only upon such filing.
- 4) If the LLP contravenes any provision of this section the LLP and its every partner shall be punishable with fine which shall not be less than Rs. 2,000 but which may extend to Rs. 25,000.

Name (Section 15)

- 1) Every limited liability partnership shall have either the words "limited liability partnership" or the acronym "LLP" as the last words of its name.
- 2) No LLP shall be registered by a name which in the opinion of the Central Government is -
 - a) Undersirable
 - b) identical or too nearly resembles to that of any other LLP or a company or a registered trade mark of any other person under the Trade Marks Act 1999.

Reservation of name (Section 16)

- 1) A person may apply in such form and manner and accompanied by such fee as may be prescribed to the Registrar for the reservation of a name set out in the application as -
 - a) the name of a proposed LLP or
 - b) the name to which a LLP proposed to change its name.

2.) Upon receipt of an application under sub-section (1) and on payment of

- i.) The prescribed fee
- ii.) The Registrar may, if he is satisfied,
- iii.) Subject to the rules prescribed by the Central Government in the matter,
- iv.) That the name to be reserved is not one which may be rejected on any
- v.) Any ground referred to in sub-section (2) of section 15,
- vi.) Reserve the name for a period of 3 months from the date of intimation by the Registrar.

Change of name of LLP (Section 17)

1.) Notwithstanding anything contained in section 15 and 16, if through inadvertence or otherwise a LLP, on its first registration or on its registration by a new body corporate its registered name, is registered by a name which is identical with or too nearly resembles to -

- a.) that of any other LLP or a company; or
- b.) a registered trade mark of a proprietor under the Trade Marks Act, 1999, as is likely to be mistaken for it,

Then on an application of such LLP or proper person referred to in clauses (a) and (b) respectively or Company.

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The Central Government may direct that such LLP to change its name or new name with in a period of 3 months from the date of issue of such direction.

It is further provided that an application of the proprietor of the registered trade marks shall be maintainable within a period of 3 years from the date of incorporation or registration or change of name of the LLP under this Act.

2.) Where a LLP changes its name or obtains a new name under sub-section (1), it shall within a period of 15 days from the date of such change, give notice of the change to registrar along with the order of the Central Government, who shall carry out necessary changes in the certificate of incorporation and within 30 days of such change in the certificate of incorporation, such LLP shall change its name in the LLP agreement.

3.) If the LLP is in default in complying with any direction given under sub-section (1), the Central Government shall allot a new name to the LLP in such manner as may be prescribed and the registrar shall enter the new name in the register of LLP in place of the old name and issue a fresh certificate of incorporation with new name, which the LLP shall use thereafter.