

Limited Liability Partnership Act, 2008

1* Introduction

- * Parliament passed LLP Bill - 12.12.2008
- * Parliament passed the Bill - 07.01.2009
- * Ministry of Law & Justice notified the Act - 09.01.2009

THE LIMITED PARTNERSHIP ACT, 2008:

- * There are 81 Sections & 4 Schedules (Sec. 81 is omitted).
- * 1st Schedule $\Rightarrow$ mutual rights and duties of partners and LLP.
- * 2nd Schedule $\Rightarrow$ Conversion of Firm into LLP.
- * 3rd Schedule $\Rightarrow$ Conversion of Private Company into LLP.
- * 4th Schedule $\Rightarrow$ Conversion of unlisted public company into LLP.
- * MCA & ROC administers the LLP Act, 2008
- * CG frame rules & amend them by notifications.

* Recently through the LLP (Amendment) Act, 2021 dated 13.08.2021.

MEANING OF LIMITED LIABILITY PARTNERSHIP:

- * New form of legal business entity with limited liability
 - * Alternative corporate business vehicle
 - * Allow the partners the flexibility of organising their internal structure
 - * LLP itself will be liable for the full extent of its asset
 - * Liability of partners will be limited.
- * Definitions:

1) BODY CORPORATE [Section 2(1)(d)]

It means companies & include

- LLP registered in India
- LLP registered outside India
- Company registered outside India

Not include:

- Sole Cooperation
- Co-operative Society
- other body corporate notified by Govt.

2] BUSINESS [Section 2(1)(e)]:

- * Includes every trade, profession, services and occupation

- * Excludes CG notified activities

3] ENTITY [Section 2(1)(k)]:

- * Body Corporate and firm

4] FINANCIAL YEAR [Section 2(1)(v)]:

- * Period from 1st April of a year to 31st March of the following year.

- * For LLP incorporates after 30th September of a year FY may end on 31st March of the next following year.

5] FOREIGN LLP [Section 2(1)(m)]:

- * LLP formed, incorporates or registered outside India

- * Establishes a place of business within India.

6] LIMITED LIABILITY PARTNERSHIP [Section 2(1)(h)]

- * Partnership formed & registered under LLP Act.

7] LIMITED LIABILITY PARTNERSHIP AGREEMENT [Section 2(1)(i)]:

- * Written agreement between the partners of the LLP or between the LLP its partners.

8] PARTNER [Section 2(1)(g)]:

- * Any person who becomes a partner in the LLP in accordance with LLP Agreement.

9] SMALL LIMITED LIABILITY PARTNERSHIP [Section 2(1)(ta)]:

- * The contribution of which does not exceed twenty-five lakh rupee or such higher amount not exceeding 50 cr rupee, as may be prescribed
- * The turnover of which, as per the Statement of Accounts and Solvency for the immediately preceding financial year, does not exceed 40 Lakh rupees or higher amount not exceeding 50 cr rupee.

Date / /

* Fulfills prescribed terms & conditions

10] NON-APPLICABILITY OF THE INDIAN PARTNERSHIP ACT, 1932 [Section 5]:

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

11] PARTNERS [Section 5]

- 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:

- a) He has been found to be of unsound mind by a court of competent jurisdiction and the finding is in force or,

- b) He is an undischarged insolvent

- c) He is applied to be adjudicated as an insolvent and his application is pending.

12] LLP SHALL HAVE ATLEAST TWO PARTNERS [Section 6]

To number of Partner fall below 2 ? → Yes → LLP carries → Consequences on business ↓
more than 6 month only partner with such of the LLP during reduced no. that time shall of partner be personally liable for the payment of the whole obligations LLP during that time period.

13] DESIGNATED PARTNER [Section 7]

(i) Every LLP shall have atleast two designated partners who are individuals and atleast one of them shall be resident of India.

(ii) Resident in India: For the purpose of these Section, the term resident in India means a person who stayed in India more than 120 days during the financial year.

(iii) If in LLP, all the partners are bodies corporate in which one or more partner are individuals and body corporate, at least two individuals who are partners of such LLP or

nominees of such bodies corporate shall act as designated partners.

* CHARACTERISTICS OF LLP.

1) Body Corporate:

- a) LLP is a body corporate formed and incorporated under this Act and is a legal entity separate from its partners and shall have perpetual succession.
- b) Therefore, any changes in the partners of the LLP shall not affect the existence, rights or liabilities of the LLP.
- c) Section 3: LLP is a body corporate formed and incorporated under this Act and is a legal entity separate from that of the partners.

2) Perpetual Succession:

- a) The LLP can continue its existence irrespective of changes in partners.
- b) Death, insanity, retirement or insolvency of partners has no impact on the existence of the LLP.
- c) It is capable of entering into contracts and holding property in its own name.

3) Separate legal Entity

The LLP as 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.

4) Mutual Agency

- a) No partner is liable on account of the independent or unauthorised actions of other partners
- b) All partners will be the agent of the LLP
- c) No one partner can bind the other partners by his acts.

5) LLP Agreement

- a) Mutual rights and duties of the partners within a LLP are governed by an agreement between the partners
- b) The Act provides flexibility to partners to make the agreement as per their choice.
- c) In absence of such agreement the rights and duties of partners are governed by the First Schedule of the LLP Act.

6) Artificial Legal person

An artificial person because it is created by a legal persons and is clothed with all rights of an individuals.

7] Common Seal :

a] A LLP being an artificial person can act through its partners and designated partners an LLP may have a common seal, if it decides to have one.

b] Thus, it is not mandatory for a LLP to have common seal.

8] Limited Liability :

Section 26 : The Liability of partners will be limited to their agreed contribution in the LLP.

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 compliance.

10] Minimum and maximum number of partners :

(Minimum) : Every LLP shall have least two (2) partners and shall also have at least 2 individuals as designated partners of whom at least one shall be resident of India.

(Maximum): There is no maximum limit on the partner to LLP

11) Business for Profit only

a) The essential requirements for forming LLP is carrying on a lawful business with a view to earn profit.

b) Thus, LLP cannot be formed for charitable or non-economic purpose.

12) Investigation

The Central Government shall have power to investigate the affairs of an LLP by appointment of competence authority for the purpose.

13) Compromise or arrangement

Any compromise or agreement including merger and amalgamation of LLP shall be in accordance with the provisions of the LLP.

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 Act, 2008.

13] Foreign LLP

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

13] E-Filing of Documents

Every form or application of document required to be filed or delivered on computer under the act and rules made thereunder.

(website: www.mca.gov.in)

* Advantages of LLP Form

LLP form is a form of business model which:

- is 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

Incorporation Document [Section 11]

* 2 or more ^{Persons} ~~partners~~ associated for carrying on lawful business to earn profit should subscribe their names to ID

* ID shall be filed with registrar of state in a prescribed manner & with prescribed fees.

* A Statement that all requirements of this Act & rules are complied with in registered office incorporation & matters precedent & incidental thereto shall be filed along with ID

* Statement should be made by

i] An advocate / CA / CMA / CS engaged in formation of LLP &

ii] Anyone who subscribed his name to ID.

* ID shall be in a prescribed form.

* IO shall state:

- i] Name of LLP
- ii] Proposed business of LLP
- iii] Address of registered office of LLP
- iv] Name & address of each partner & DP.

* Penalty for false declaration:

⇒ Imprisonment (maximum 2 years)

⇒ Fine > 10,000 (min to maximum 5L)

Incorporation By Registration
[Section 12]

* If IO & a statement has filed with registrar, he shall retain the IO.

* If 2 or more persons subscribe their name to IO within 14 days, he shall

⇒ register the incorporation document &

⇒ give a certificate of incorporation.

* Registrar may accept the statement as sufficient evidence that 2 or more persons has subscribed their names.

* Certificate shall be signed by Registrar & authenticated by his official seal.

* Certificate shall be conclusive evidence that LLP is incorporated by the name specified therein.

Registered office of LLP and change therein
[Section 13]

* Every LLP have a registered office.

* Communication & notices are addressed & received in registered office.

* A document shall be delivered to a LLP as a partner or a DP by sending it by post at the registered office.

* LLP may change the place of registered office by filing notice of change with registrar.

* Penalty for contravention

⇒ LLP & its every partner = ₹ 500 per day
(maximum ₹ 50K)

Effect of Registration [Section 14]

* On registration, LLP shall be capable of:

- ⇒ Suing or 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

NAME [Section 15]

* Every LLP shall have the words 'Limited Liability Partnership' or 'LLP' as last word of its name.

* Name should not be undesirable or identical in Co opinion.

Reservation of Name [Section 16]:

* A person may apply for reservation of Name (Name of a proposed LLP or name to which LLP proposes to change its name) to the registrar with prescribed fees.

* Registrar shall reserve the name for a period of 3 months from the date of intimation by the Registrar, if he is satisfied that

* Change of name of LLP [Section 17]

* If LLP is registered by a name which is identical with that of any other LLP / company / registered trademark of a proprietor & the concerned person has made an application, CG may direct the LLP to change its name within 3 months.

* Application of proprietor of registered trademark shall be maintainable for 3 years from the date of incorporation / registration / change of name.

* If LLP changes its name, it shall give notice of change to Registrar along with CG order within 15 days from date of change.

* Registrar shall change in certificate of incorporation

* LLP shall change the name in the LLP agreement within 30 days of change in certificate of incorporation.

Date / /

- * In case of default by LLP in changing the name, CG shall allot a new name & Registrar shall enter the new name in the Register of LLP & issue a fresh certificate of incorporation.

- * LLP can change its name subsequently.

- * LLP gives the benefits of limited liability of a company and the flexibility of a partnership.

- * 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 (Sec 26 of the LLP Act, 2008). The liability of the partner will be limited to their agreed contribution to the LLP, while the LLP itself will be liable to the full extent of its assets.

- * Flexibility of a partnership: The LLP allows members the flexibility of organizing their internal structure as a partnership based on a mutually arrived agreement. The LLP form enables entrepreneurs, professionals and enterprises providing services of any kind or engaged in scientific or technical disciplines, to form ^{commercially} efficient vehicles suited to their requirements. Owing to flexibility in its structure and operation, the LLP is a suitable vehicle for small enterprises and for

investment by venture capital.

SECTIONS

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