



LIMITED LIABILITY PARTNERSHIP ACT, 2008 [LLP ACT]

With the growth of Indian economy, the role played by its entrepreneurs as well as its technical and professional manpower has been acknowledged internationally. In this background, a need was felt for a new corporate form that would provide an alternative to the traditional partnership which exposes its partners to unlimited personal liability and a statute based governance structure of limited liability companies.

Limited Liability Partnership [LLP] is viewed as an alternative corporate business vehicle that provides the benefits of the limited liability but allows its members the flexibility of organizing their internal structure as a partnership based on a mutually arrived agreement. LLP form is expected to enable entrepreneurs, professionals and enterprises providing services of any kind or engaged in scientific and technical disciplines, to form commercially efficient vehicles suited to their requirements.

With this background, Limited Liability Partnership Act, 2008 [LLP Act] was enacted on January 7, 2009.

Subsequently, Government of India [GOI] notified various provisions of LLP Act on 31st March 2009. GOI has, on April 1, 2009, also notified the Limited Liability Partnership Rules, 2009 [LLP Rules] in respect of registration and operational aspects under the LLP Act.

KEY DEFINITIONS

- "Body Corporate" is defined to mean a company as defined under the Companies Act, 1956 and includes LLP, LLP incorporated outside India, a foreign company but does not include a corporation sole, a registered co-operative society and any other body corporate notified by the Central Government (not being a company defined under the Companies Act, 1956 or LLP defined under LLP Act). [Section 2(1)(d)]
- "Business" includes every trade, profession, service and occupation. [Section 2(1)(e)]
- "Financial Year", in relation to LLP, means the period from 1st April of a year to the 31st March of the following year. However, in case of LLP incorporated after 30th September, financial year may end on 31st March of the year next following that year. [Section 2(1)(l)]
- "Foreign Limited Liability Partnership" means a LLP formed, incorporated or registered outside India which establishes a place of business within India. [Section 2(1)(m)]
- "Limited Liability Partnership" means a partnership formed and registered under LLP Act. [Section 2(1)(n)]
- "Limited liability partnership agreement" means any written agreement between the partners of 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. [Section 2(1)(o)]
- "Partner" in relation to LLP means a person who becomes a partner in a LLP in accordance with the LLP

agreement. [Section 2(1)(q)]

NATURE OF LLP

- LLP is a –
 - "body corporate" formed and incorporated under LLP Act;
 - legal entity separate from its partners and has perpetual succession.

[Section 3(1)]

- Two or more partners are required to form an LLP. Any individual or a body corporate can be a partner in a LLP.

In case if individual is a partner, he should not be –

- found to be of unsound mind; or
- an undischarged insolvent; or
- a person who has applied to be adjudicated as insolvent and the application is pending

[Sections 5 and 6]

DESIGNATED PARTNERS [SECTION 7]

- LLP shall have at least two "designated partners" who are individuals and at least one of them shall be "resident in India". In case one or more of the partners of a LLP are bodies corporate at least two individuals who are partners of such LLP or nominees of such bodies corporate shall act as "designated partners"
 - "Resident in India" means a person who has stayed in India for minimum 182 days during the immediately preceding 1 year.
- Designated partner is responsible for compliance with the provisions of LLP Act.
- Designated Partner is required to obtain Designated Partner Identification Number [DPIN] from the Central Government.
- Application for allotment of DPIN needs to be submitted online on the LLP website along with the necessary proof duly attested and certified as prescribed.

INCORPORATION OF LLP [SECTIONS 11 TO 21]

Procedure for incorporation of LLP is similar to the procedure for incorporation of a company under the Companies Act, 1956. Applicants are first required to file the application for reservation of name with the Registrar of Companies [ROC]. Once the name applied is approved by the ROC, the documents for incorporation of LLP need to be filed.

- Name of every LLP shall end with the words "Limited Liability Partnership" or "LLP".
- Name which is undesirable or nearly resembles to that of any other partnership firm or LLP or any body corporate or trade mark, is not allowed.
- Any entity (body corporate/registered partnership firm) which has a name similar to the name of LLP which has been incorporated subsequently may seek change of name of such LLP through ROC within 24 months from date of registration of such LLP.
- No person shall carry on business under any name/title which contains the words "Limited Liability Partnership" or "LLP" without duly incorporating it as LLP under the LLP Act.
- LLP is required to file with the ROC, the LLP agreement ratified by all the partners within 30 days of incorporation of LLP.

PARTNERS AND THEIR RELATIONS AND EXTENT OF LIABILITY [SECTIONS 22 TO 31]

- Mutual rights and duties of partners of an LLP *inter se* and those of the LLP and its partners shall be governed by an agreement between the partners, or agreement between the LLP and its partners. In absence of any such agreements, the mutual rights and duties shall be governed by the LLP Act.
- Every partner of a LLP is, for the purpose of the business of LLP, the agent of LLP, but not of other partners.
- LLP, being a separate legal entity, shall be liable to the full extent of its assets whereas the liability of the partners of LLP shall be limited to their agreed contribution in the LLP.
- 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 or does not know or believe him to be a partner of the LLP
- LLP is liable if the partner of a LLP is liable to any person for wrongful act/omission on his part in the course of business of LLP/with its authority
- Obligation of LLP whether arising in contract or otherwise, shall solely be the obligation of LLP. Liabilities of LLP shall be met out of properties of LLP.
- Partner is not personally liable for the obligations of LLP solely by reason of being a partner of LLP.
- No partner is liable for the wrongful act or omission of any other partner of LLP, but the partner will be personally liable for his own wrongful act or omission.
- The liability of the LLP and partners who are found to have 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.
- Cessation of a partner on grounds like resignation, death, dissolution of LLP, declaration that a person is of unsound mind, declared/applied to be adjudged as insolvent etc. will not be effective unless –
 - the person has notice that the partner has ceased to be so; or
 - notice of cessation has been delivered to ROC.

The notice of cessation may be filed by the outgoing partner if he has reasonable cause to believe that LLP has not file the said notice.

CONTRIBUTION BY PARTNER [SECTIONS 32 AND 33]

- A contribution of a partner to the capital of LLP may consist of any of the –
 - tangible, movable or immovable property
 - intangible property
 - other benefit to the LLP including money, promissory notes, contracts for services performed or to be performed.
- The obligation of a partner for the contribution shall be as per the LLP agreement.
- Creditor, which extends credit or acts in reliance on an obligation described in the LLP agreement, without the notice of any compromise made between the partners, may enforce the original obligation against such partner.

AUDIT/FINANCIAL DISCLOSURES [SECTIONS 34 AND 35]

- LLP shall maintain the prescribed books of accounts relating to its affairs on cash or accrual basis and according to the double entry system of accounting.

- The accounts of every LLP are required to be audited, except in following situations:
 - Turnover does not exceed Rs. 40,00,000 in any financial year; or
 - Contribution does not exceed Rs. 25,00,000
- Central Government has powers to exempt certain class of LLP from requirement of compulsory audit.
- LLP are required to file following documents with the ROC –
 - Statement of Account and Solvency, within 30 days from the end of 6 months of the financial year;
 - Annual return within 60 days from the end of the financial year.

ASSIGNMENT & TRANSFER OF PARTNERSHIP RIGHTS [SECTION 42]

- The rights of a partner to a share of the profits and losses of the LLP and to receive distribution in accordance with the LLP agreement are transferable, either wholly or in part. However, such transfer of rights does not cause either disassociation of the partner or a dissolution and winding up of the LLP.
- Such transfer of right, shall not, by itself entitle, the assignee or the transferee to participate in the management or conduct of the activities of the LLP or access information concerning the transactions of the LLP.

FOREIGN LLP [SECTION 59 AND RULE 34]

- On establishment of a place of business in India, foreign LLP are required to file prescribed documents for registration with ROC within 30 days of the establishment in India.
- Any alteration in the constitution documents, overseas principle office address and partner of foreign LLP are required to be filed with the ROC in the prescribed form within 60 days of the close of the financial year.
- Any alteration in the certificate of registration of foreign LLP, authorized representative in India and principle place of business in India are required to be filed with the ROC in the prescribed form within 30 days of alteration.
- Foreign LLP ceasing to have a place of business in India, are required to give notice to ROC in the prescribed form within 30 days of its intention to close the place of business and from the date of such notice, the obligation of Foreign LLP to file any document with the ROC shall cease, provided it has no other place of business in India and it has filed all the documents due for filing as on the date of the notice.

CONVERSION OF PARTNERSHIP FIRM/PRIVATE COMPANY/UNLISTED PUBLIC COMPANY INTO LLP [SECTIONS 55 TO 58, SECOND, THIRD AND FOURTH SCHEDULES]

GOI has, on May 22, 2009, notified provisions relating to conversion of –

- a partnership firm as defined under the Indian Partnership Act,1932 into LLP;
- a private limited company into LLP;
- an unlisted public company into LLP.

Second, Third and Fourth Schedules to the LLP Act contain provisions relating to conversion of a partnership firm into LLP, a private limited company into LLP and unlisted public company into LLP, respectively.

- *Eligibility for conversion:*

- Firm into LLP: Firm can be converted into LLP if all the partners of firm become the partners of LLP and no one else.

- Company into LLP: Private limited company/unlisted public company can be converted if and only if -

(a) there is no security interest in its assets subsisting or in force at the time of application for conversion; and

(b) all the shareholders of the company become partners of LLP and no one else.

- For conversion of firm/private limited company/unlisted public company into LLP, the partners of the firm/shareholders of company are required to file a statement and incorporation documents in the prescribed form with the ROC.

- On receiving the documents for conversion, ROC shall register the documents and issue certificate of registration specifying the date of registration as LLP. Upon registration by ROC, LLP shall intimate Registrar of Firm [ROF]/ROC, as the case may be, about conversion within 15 days of registration.

- On and from the date specified in the certificate of registration issued by ROC -

- all tangible (movable/immovable) & intangible property, liabilities, interest, obligation etc. relating to the firm/private limited company/unlisted public company and the whole of the undertaking of the firm/private limited company/unlisted public company, shall be transferred to and shall vest in the LLP without further assurance, act or deed.

- firm/private limited company/unlisted public company shall be deemed to be dissolved and removed from the records of ROF/ROC, as the case may be.

- If any property/rights, etc. of the partnership firm/private limited company/unlisted public company is registered with any authority, LLP shall take steps to notify the authority of the conversion.

- Upon conversion, following things/events in favour of or against the firm/private limited company/unlisted public company on the date of registration may be continued, completed and enforced

by or against the LLP:

- all proceedings, conviction, ruling, order or judgment of any Court, Tribunal or other authority pending in any Court or Tribunal or before any authority on the date of registration

- every agreement irrespective of whether or not the rights and liabilities thereunder could be assigned,

- deeds, contracts, schemes, bonds, agreements, applications, instruments and arrangements

- every contract of employment

- appointment in any role or capacity

- any approval, permit or licence issued under any other Act, etc.

- In case of a firm, every partner of a firm which is converted into a LLP shall continue to be personally liable (jointly and severally with LLP) for the liabilities and obligations of the firm incurred prior to the conversion or which arose from any contract entered into prior to the conversion. In case any such partner discharges any such liability or obligation he shall be entitled (subject to any agreement with the LLP to the contrary) to be fully indemnified by LLP in respect of such liability or obligation.

- For a period of 12 months commencing on or before 14 days from the date of registration, LLP shall ensure that every official correspondence of LLP bears the following:

- a statement that it was, as from the date of registration, converted from a firm/private limited company/unlisted public company into a LLP; and

- the name and registration number, if applicable, of the firm/a private limited company/an unlisted public company from which it was converted.

COMPROMISE, ARRANGEMENT OR RECONSTRUCTION OF LLPS [SECTION 60]

- Provisions have been made in the LLP Act for allowing a compromise and arrangement including mergers and amalgamations.

- Compromise and arrangement can be between LLP and its creditors or between LLP and its partners.

- If majority representing 3/4th in value of creditors or partners, at the meeting, agree to compromise or arrangement shall, if sanctioned by National Company Law Tribunal [NCLT] be binding on all the creditors, all the partners and LLP. NCLT to pass order subject to disclosure of all material facts/latest financial position and pendency of investigation proceedings.
- NCLT order shall be filed with the ROC within 30 days, in order to be effective.
- In case of scheme of the amalgamation, NCLT shall pass order only on receipt of report from the ROC that the affairs of the LLP (transferor LLP) have not been conducted in the manner prejudicial to the interest of the partner/public.

WINDING-UP OF LLP [SECTIONS 63 AND 64]

LLPs may be wound-up either voluntarily or by NCLT. LLP may be wound up by NCLT if –

- LLP decides to wound up by NCLT;
- Number of partners is reduced below 2 for a period of more than 6 months;
- LLP is unable to pay its debts;
- LLP has acted against the interests of the sovereignty and integrity of India, the security of the State or public order;
- LLP has defaulted in filing Statement of Account and Solvency or annual return with the ROC for 5 consecutive financial years; or
- NCLT is of the opinion that it is just and equitable that the LLP be wound up

In January 2010, MCA had notified that certain provisions relating to winding-up of a company under the Companies Act, 1956 will also be applicable to a LLP. The notification also provides details of modification in the provisions of the Companies Act relating to winding up for its applicability to winding up of LLP under the LLP Act. Subsequently, on 30 March 2010, issued Limited Liability Partnership (Winding up and Dissolution) Rules, 2010.

MISCELLANEOUS PROVISIONS

- The Central government has been empowered to apply any of the provisions of the Companies Act, 1956 to LLPs with suitable changes or modification. [Section 67]
- ROC may strike off the name of LLP from the register of LLP if LLP is not carrying on business or its operation, in accordance with the provisions of LLP Act in the manner prescribed. [Section 75]
- Forms/documents required to be filed under the LLP shall be filed in electronic form online on the LLP portal duly authenticated by the partner/designated partner with a digital signature and further attested by the practicing chartered accountant/company secretary/cost accountant whenever required. [Section 68]
- Presently all the provisions of the LLP Act, other than those relating to winding-up and dissolution of LLP and appellate provisions to be exercised by NCLT and National Company Law Appellate Tribunal [NCLAT], have been brought into force.
- Till the constitution of NCLT and NCLAT under the Companies Act, 1956, the powers of NCLT and NCLAT will be exercised by the Company Law Board or High Court as is specified in the LLP Act. [Section 81]
- Unless specifically provided, the provisions of the Indian Partnership Act, 1932 are not applicable to LLPs. [Section 4]