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## Introduction

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LLP (LLP) is an incorporated partnership formed and registered under the LLP Act 2008 ('The Act') with limited liability and perpetual succession. The Act came into force, for most part, on 31st March 2009 followed by its Rules on 1st April 2009 and the registration of the first LLP on 2nd April 2009.

LLP is viewed as an alternative corporate business vehicle that provides the benefits of limited liability but allows its partners the flexibility of organizing their internal structure as a partnership based on a mutually arrived agreement.

## Salient Features

The salient features of the LLP are as follows:—

- (i) The LLP is a body corporate and a legal entity separate from its partners. The LLP has a perpetual succession;
- (ii) The 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 partners or between the LLP and the partners subject to the provisions of the proposed legislation.
- (iii) A LLP is a separate legal entity, liable to the full extent of its assets, with the liability of the partners being limited to their agreed contribution in the LLP.
- (iv) No Mutual Agency: No partner would be liable on account of the independent or un-authorized acts of

# Salient Features

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- (iii) A LLP is a separate legal entity, liable to the full extent of its assets, with the liability of the partners being limited to their agreed contribution in the LLP.
- (iv) No Mutual Agency: No partner would be liable on account of the independent or un-authorized acts of other partners or their misconduct;
- (v) Every LLP shall have at least 2 partners and shall also have at least 2 individuals as Designated Partners, of whom at least 1 shall be resident in India.
- (vi) A statement of accounts and solvency shall be filed by every LLP with the Registrar every year. The accounts of LLPs shall also be audited, subject to any class of LLPs being exempted from this requirement by the Central Government;
- (vii) The Central Government has power to investigate the affairs of an LLP, if required, by appointment of competent inspector for the purpose;



## Detailed Explanation

Section 5 provides that any **Individual or Body Corporate** may be a partner in limited liability partnership. However, an individual shall not be capable of becoming a partner of a limited liability partnership, if—

- (a) He has been found to be of unsound mind by a Court of competent jurisdiction and the finding is in force;
- (b) he is an undischarged insolvent; or
- (c) he has applied to be adjudicated as an insolvent and his application is pending.

**Note:** - Vide Circular No. 2/2016 dated 15th January 2016, it has been clarified by Ministry of Corporate Affairs that a HUF or its Karta cannot become partner or designated partner in LLP.

1. Section 7 provides that every LLP shall have **at least 2 Designated Partners who are individuals** and at least 1 of them shall be a Resident in India.
2. Provided that in case of a LLP in which all the partners are body corporates, at least 2 partners shall nominate their respective individuals who are to act as "Designated Partners" and one of the nominees shall be a resident of India.

1. Every designated partner of a LLP shall obtain a Designated Partner Identification Number (DPIN) from the Central Government and the provisions of Sections 153

Prohibition =

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Number of  
Designated  
Partners

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DPIN

1. Every designated partner of a LLP shall obtain a Designated Partner Identification Number (DPIN) from the Central Government and the provisions of Sections 153 to 159 (both inclusive) of the Companies Act, 2013 shall apply mutatis mutandis for the said purpose.
2. The Central Government, vide Notification No. GSR 506(E) dated 5th July, 2011 notified LLP (Amendment) Rules, 2011 whereby it has integrated the Director's Identification Number (DIN) issued under Companies Act, 1956 (Old Act) with





- 2000.
4. Every designated partner, shall intimate his consent to become a designated partner to the LLP and DPIN, in Form 9 and the LLP shall intimate such DPIN to Registrar in Form 4.
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If he –

- (a) Has at any time within the preceding 5 years been adjudged insolvent; or
  - (b) Suspends, or has at any time within the preceding 5 years suspended payment to his creditors and has not at any time within the preceding 5 years made, a composition with them;
  - (c) has been convicted by a Court for any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than 6 months; or
  - (d) has been convicted by a Court for an offence involving section 30 of the Act.
- 

### **Where the LLP has contravened the provisions of LLP Act**

The DP would be liable to all penalties imposed on the LLP for the contravention of the provisions of the Act and as such the DP would be required to pay all the monetary fines imposed on the LLP. There is no provision in the Act providing for the reimbursement of such monetary penalties to him by the LLP. Further in the following instances apart from the LLP, the DP would also be imposed monetary penalties under the Act:-

- a) For non-compliance with the directions of the Central Government for change of name under Section 17 of the Act,
- b) For non-maintenance of books of accounts, non-filing of accounts, duly audited where such an audit is mandatory under Section 34 of the Act,
- c) For non-filing of the annual return of the LLP with the Registrar under Section 35 of the Act.



- \* (iv) No Mutual Agency: No partner would be liable on account of the independent or un-authorized other partners or their misconduct;
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- (vii) The Central Government has power to investigate the affairs of an LLP, if required, by appointment of competent inspector for the purpose;

## Distinction between LLP and Partnership

The principle points of difference between a company and a partnership are as follows:

1. **Separate Legal Entity** : -LLP is a separate legal entity and therefore, can be sued or it can sue others without involving the partners. A partnership firm is not distinct from the several persons who compose it.
2. **Limited Liability** :- The partners of a LLP would have limited liability i.e. they would not be liable beyond the money contributed by them. Whereas, partners of a firm would have unlimited liability.
3. **Dissolution** : - The retirement or death of a partner would not dissolve the LLP. On the other hand, the death or retirement of a partner would dissolve the partnership firm.
4. **Property** :- In a partnership, the property of the firm is the property of the individuals comprising it. In a LLP, it belongs to the LLP and not to the individuals comprising it.



## Distinction between LLP and Company

1. **Simple Incorporation** :- In case of LLP, the need for defining the objects to be pursued and the other matters which are necessary for furtherance of the objects as well as framing the Share Capital clause in the memorandum for incorporating a company is reduced into a simple procedure of filling of the prescribed information in the Incorporation document and statement in Form No. 2.
2. **LLPA/AOA** :- In case of LLP, a 'LLP agreement' (LLPA) is prepared which is a variant of the 'articles of association' of a company.
3. **Change in Office** :- Whereas the memorandum of a company is required to name the state in which it is required to be incorporated, there is no such obligation in the case of LLP. Consequently, the detail procedure involved in changing the registered office from the state of incorporation to another state is not required to be followed in case of a LLP.
4. **Meetings** :- In the LLP Act, there is no such stipulation for meeting of partners either periodically or compulsory at the year end as stipulated for directors and shareholders meetings in the Companies Act.
5. **Divorce** :- There is no separation between management of the company and the ownership as is observed in a company since all the partners, unlike all the directors, can take part in the day to day affairs of the LLP.
6. **Directors Remuneration** :- Whereas, the Companies Act contemplates regulating the remuneration payable to directors, there are no corresponding provisions in the LLP Act for remuneration payable to designated partners. The same could be as per the LLP Agreement.
7. **Borrowing** :- In the case of LLP, unlike in the case of companies, there are no restrictions on the borrowing powers.
8. **Cash Basis/Accrual Basis** :- The LLP can choose to maintain the accounts on cash basis/accrual basis

## Comparison of LLP with Private Limited Company

A comparison of a LLP with a Private Limited Company reveals that such companies have:

1. **Limited Liability**: Similar to LLP.
2. **Internal flexibility**: The Company Law requires a formal board structure and decision making at validly constituted meetings, passing of resolutions and maintenance of minutes of meetings.
3. **Privacy**: Similar to LLP.
4. **Requirement of a LLP agreement**: The Memorandum and Articles of Association are the default standard provisions doing away with the need for a separate agreement similar to a LLP agreement.
5. **Legal uncertainty**: Private Limited companies have long been in existence and being tried and tested vehicles of business entities, there is no legal uncertainty which is not true in case of a LLP.

The LLP structure seems most suited for partnership concerns set up by professionals such as company secretaries in practice and others, by offering them the benefits of limited liability on one hand and the flexibility in internal management that is akin to partnerships on the other.

## Incorporation of Limited Liability Partnership

Theme	Detailed Explanation
Basic Requirements	According to section 11 (1) of the LLP Act, 2008, for a LLP to be incorporated— (a) <b><u>Number of Partners</u></b> : 2 or more persons associated for carrying on a lawful business with a view to profit shall subscribe their names to an incorporation

# Incorporation of Limited Liability Partnership

Theme	Detailed Explanation
<b>Basic Requirements</b>	<p>According to section 11 (1) of the LLP Act, 2008, for a LLP to be incorporated—</p> <ul style="list-style-type: none"> <li>(a) <b><u>Number of Partners</u></b> : 2 or more persons associated for carrying on a lawful business with a view to profit shall subscribe their names to an incorporation document;</li> <li>(b) <b><u>Incorporation document</u></b> shall be filed in such manner and with such fees, as may be prescribed with the registrar of the state in which the registered office of the LLP is to be situated; and</li> <li>(c) <b><u>Compliance Certificate</u></b> : A statement in the prescribed form 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, who is engaged in the formation of the LLP and by any one 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.</li> </ul>
<b>Incorporation Document (Form 2)</b>	<p>The incorporation document shall— .</p> <ul style="list-style-type: none"> <li>(a) be in <b><u>Form 2</u></b> as per rule 11.</li> <li>(b) state the <b><u>name</u></b> of the limited liability partnership;</li> <li>(c) state the <b><u>proposed business</u></b> of the limited liability partnership;</li> <li>(d) state the <b><u>address of the registered office</u></b> of the limited liability partnership;</li> </ul>



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Fillip

Fillip

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Basic Requirements	<p>According to section 11 (1) of the LLP Act, 2008, for a LLP to be incorporated—</p> <p>(a) <u>Number of Partners</u> : 2 or more persons associated for carrying on a lawful business with a view to profit shall subscribe their names to an incorporation document;</p> <p>(b) <u>Incorporation document</u> shall be filed in such manner and with such fees, as may be prescribed with the registrar of the state in which the registered office of the LLP is to be situated; and</p> <p>(c) <u>Compliance Certificate</u> : A statement in the prescribed form shall be filed along with the incorporation document, made by either an <u>advocate</u>, or a <u>Company Secretary</u> or a <u>Chartered Accountant</u> or a <u>Cost Accountant</u>, who is engaged in the formation of the LLP and by any one 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.</p>
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### Detailed Explanation

If a person makes a statement under clause (c) of Sub-Section (1) 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 lacs.

Subject to prior compliance with the requirements of section 11(1) of the Act, section 12(1) mandates the Registrar to register the incorporation document and issue a certificate of incorporation within 14 days. The certificate of incorporation shall be conclusive evidence that the LLP is incorporated by the name specified in the incorporation document.

1. Every LLP shall have a registered office to which all communications and notices may be addressed and where they shall be received. [Section 13(1)]
2. LLP may change its registered office from one place to another by following the procedure as laid down in the LLPA. Where the LLPA does not provide for such procedure, consent of all partners shall be required for changing the place of registered office of LLP to another place:
3. Provided that where the change in place of registered office is from one state to another state, the LLP having secured creditors shall also obtain consent of such secured creditors.





3. Provided that where the change in place of registered office is from one state to another state, the LLP having secured creditors shall also obtain consent of such secured creditors.

1. According to section 15(1), every LLP shall have either the words "limited liability partnership" or the acronym "LLP" as the last words of its name.
2. LLP may change its name by following the procedure as laid down in the LLP agreement. Where the LLP agreement does not provide such procedure, consent of all partners shall be required for changing the name of the limited liability partnership.

### **Prohibited Words:**

- a) Section 15 (2) prohibits registration of a LLP with a name that is either undesirable in the opinion of the Central Government or that is identical with or that which too nearly resembles to the name of any existing partnership firm or a LLP or a body corporate or a trade mark registered or pending registration under the Trade Marks Act, 1999.
- b) The name of the LLP shall not be one prohibited under the Emblems and Names (Prevention of Improper Use) Act, 1950.
- c) No LLP should be allowed to be registered with the word "National" as part of its title unless it is a government company and the Central / State Government(s) has a stake in it. Similarly, the word 'Bank' may be allowed in the name of an entity only when such entity produces a 'No Objection Certificate' from the RBI in this regard. By the same analogy the word, "Stock Exchange" or "Exchange" should be allowed in name of a company only where No Objection Certificate from SEBI in this regard is produced by the promoters.



If not, then Unanimous  
Consent.

Unique  
name.

partnership.



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## LLP Agreement (Form 3) (First Schedule)

Theme	Detailed Explanation
Importance of LLPA	<ol style="list-style-type: none"><li>1. The LLP agreement determines <u>the mutual rights and duties of the partners</u> and their rights and duties in relation to limited liability partnership. This LLP agreement is required to be filed with the Registrar.</li><li>2. LLP agreement should be filed with the Registrar within 30 days of incorporation in form 3.</li><li>3. A person becomes a Partner by virtue of LLP agreement. This means that the LLP agreement is a must and it serves as a basic document and, to a certain extent, takes the place of MOA and AOA applicable in the case of a company registered under the Companies Act, 2013. The importance of the said document lies in the fact that it is a public document and it is open to public inspection being on the records of the Registrar.</li><li>4. Any change in the LLP agreement is also required to be notified to the Registrar of Companies.</li></ol>