

CHAPTER 6
LIMITED LIABILITY PARTNERSHIP ACT, 2008

DATE OF EFFECT OF THE PROVISIONS-SECTION 1(3)

- 1) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint
- 2) Different Dates may be appointed for different provision of the Act
 - a) **31st May 2009**
Sections 55 to 58, Second Schedule, Third Schedule and Fourth Schedule
 - b) **31st March 2009**
Other Sections and Schedule
 - c) **Not yet notified**
Sections 51, 55 to 58, 72 to 73, 81 (b) and (c) dealing with the National Company Law Tribunal

LIMITED LIABILITY PARTNERSHIP DEFINITION-SECTION 2(1)(n)

Limited liability partnership' as a partnership formed and registered under LLP Act

WHO ALL MAY BECOME PARTNER IN LLP-SECTION 5

- 1) **Eligible**
Any individual or body corporate may be a partner in a LLP
- 2) **Body Corporate**
Body Corporate includes the following
 - i) Company
 - ii) LLP registered under the Act
 - ii) LLP incorporated outside India
 - iv) Company incorporated outside India
- 3) **Does not include**
 - i) Corporation sole
 - ii) CO-operative Society
 - iii) Any other notified by Government
- 4) **Individual-Disqualified**
 - a) Unsound Mind declared by court
 - b) Undischarged Insolvent
 - c) Who has applied for insolvency

MINIMUM NUMBER OF NUMBERS-SECTION 6(1)

Every LLP shall have at least two partners

RESTRICTION IN MINIMUM NUMBER OF MEMBERS-SECTION 6(2)

- 1) Number of partners of a LLP is reduced below two
- 2) LLP on business for more than six months while the number is so reduced
- 3) Person shall be liable personally for the obligations of LLP

SUBMISSION OF INCORPORATION DOCUMENTS-SECTION 11(1)

- a) Two or more person 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 in LLP Form No. FILLIP
- c) The incorporation documents shall (**Section 11(2)**
 - State the name of the LLP
 - State the proposed business of the LLP
 - State the address of the registered office of the LLP
 - State the name and address of each of the persons who are to be partners of the LLP on incorporation
 - State the name and address of the persons who are to be designated partners of the LLP on incorporation
 - Contain such other information as may be prescribed.

SU INCORPORATION BY REGISTRATION-SECTION 12(1)

- 1) **Retain**
The Registrar shall retain the incorporation document
- 2) **Issue Certificate**
He 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
- 3) **Certificate by Professional**
Statement furnished by a Professional engaged in the formation of the LLP will be considered sufficient evidence that the requirement imposed has been complied with
- 4) **Signed by Registrar**
The Certificate shall be signed by the Registrar and authenticated by his office

5) Conclusive Evidence

Certificate is the conclusive evidence that the LLP is incorporated by the name specified therein

6) Register of LLP

The Registrar shall maintain a Register of LLP in which the names of LLPs shall be entered

7) LLP Identification Number

Every LLP so registered shall be assigned a LLP identification Number (LLPIN) in one consecutive series

REGISTERED OFFICE-SECTION 13

Every LLP shall have a registered office to which all communications and notices may be addressed and where they shall be received

SERVICE OF DOCUMENT-SECTION 13(2)**1) May be served on**

- a) LLP
- b) Partner
- c) Designated Partner

2) Mode of Service

- a) Registered Post
- b) Electronic Communication
- c) Courier

3) Place to serve Notice

- a) Registered office and
- b) Any other address specifically by declared by the LLP for this purpose

CHANGE OF REGISTERED OFFICE-SECTION 13(3)**1) According to LLP Agreement**

LLP may change the place of its registered office and file the notice of such change with the Registrar

2) Agreement not specified

Consent of all partners shall be required

3) Change from one State to another State

- a) Consent of Secured Creditor required
- b) Public general notice in daily newspaper(English and one principal language)
- c) Notice shall be given at least 21 days before filing notice with registrar

4) Form

Form No 15

5) Time Limit

File form with 30 days

6) Change from one Jurisdiction of ROC to another

- a) LLP shall file the notice in Form 15 with the Registrar proposes to shift
- b) A Copy of form shall be filed with the Registrar with whom it wants to shift

ADDRESS SPECIFICALLY DECLARED BY LLP-RULE 16

- 1) The LLP may, in addition to the registered office address, declare any other address as its address for service of documents

2) Mode of changing

a) LLP Agreement

b) If not LLP Agreement

Consent of all partners shall be required for declaring any other address

3) Form and Time Limit

Form- Form 12

Days- 30 days

EFFECT OF REGISTRATION-SECTION 14BMISSION OF INCORPORATION DOCUMENTS-SECTION 11(1)

A LLP shall, by its name, 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

NAME- 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) 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 registered trade mark or a trade mark which is subject of an application for registration, of any other person under the Trade Marks Act, 1999.

PUBLICATION OF NAME AND LIMITED LIABILITY-SECTION 21

Every LLP shall ensure that its invoices, official correspondence and publications bear the following-

- a) The name, address of its registered office and registration number of the LLP; and
- b) A statement that is registered with LLP

CHANGE OF NAME-RULE 20**1) Mentioned in Agreement**

Any LLP may change its name by following the procedure as laid down in the LLP agreement.

2) Consent of all partners if not mentioned

Where the LLP agreement does not provide such procedure, the consent of all partners shall be required for changing the name of LLP. Notice of change of name shall be given to the

3) File form with ROC

Registrar in Form No. 5 within 30 days of complying with the requirement along with the required fee.

4) Fresh Certificate of Incorporation

The Registrar shall issue a fresh certificate of incorporation in the new name and the change name shall be effective from the date of such certificate.

CHANGE OF NAME BY GOVERNMENT-SECTION 17

1) Reason for change

Central Government may direct such LLP to change its name in the following case

- a) Name is undesirable or is identical too nearly resembles the name of any other LLP or body corporate or other name
- b) LLP have been registered through inadvertence or otherwise

2) Time limit

LLP need to follow directions within 3 months

3) Penalty

a) LLP

Fine Rs 10,000 to Rs 5,00,000

b) Designated partner

Fine Rs 10,000 to Rs 1,00,000

CESSATION OF PARTNERSHIP INTEREST-SECTION 24

1) Mode of Cessation

a) Specified in Agreement

Accordance with LLP agreement

b) Not Specified

Partner who intends to resign may give notice in writing within 30 days to the other partners

2) Cessation of Partnership

- 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

3) Liability of ceased Partner-Section 24(3)

Partner is still regarded as partner unless

- a) Person has notice that the former partner has ceased to be the partner
- b) Notice about cessation has been delivered to ROC

4) Obligation-Section 24(4)

Partner is not discharged from any obligation to the LLP or to the other partners or to any other person which he incurred while he is a partner

5) Entitlement to the ceased partner-Section 24(5)

Partner who cease to be the partner of LLP, subject to agreement, he shall be entitled to receive

- a) Amount equal to contribution actually made to the LLP
- b) Right to share in accumulation profit of LLP

6) Restriction on ceased partner-Section 24(6)

He shall have no right to interfere in the management of LLP

REGISTRATION OF CHANGES IN PARTNER-SECTION 25**1) Intimate Changes**

Every partner shall inform the LLP of any change in his name or address

2) Time Limit

15 days

3) Form

Form No 6

4) LLP filing with ROC

- a) LLP shall file notice with ROC
- b) Form No 4
- c) Filing when a person becomes partner or cease to be a partner
- d) Filing for change of address of name
- e) Signed by Designated Partner
- f) Accompanied by certificate from a Chartered Accountant or Cost Accountant or Company Secretary in practice

5) Penalty**a) LLP**

If LLP fails to file notice in Form 4 then LLP and designated partner shall be punishable with fine Rs 2000- Rs 25000

b) Partner Contravenes

Fine- Rs 2000- Rs 25000

Partner as Agent-Section 26

- 1) Every partner of a LLP is the agent of the LLP.
- 2) He is not the agent of other partners.

LIABILITY OF LLP-SECTION 27**1) LLP is liable**

- a) Act done in the course of business
- b) Act is done within authority
- c) Contract is entered in the name of LLP

2) LLP is not liable

- a) Act is done without authority by partner and
- b) The person knows that he has no authority

EXTENT OF LIABILITY OF PARTNER-SECTION 28**1) No Liability Generally**

A partner is not personally liable

2) Personal Liability

a) Partner is personal liable for the acts of a partner for his own wrongful act or omission

b) He shall not be personally liable for the wrongful act or omission of any other partner of the limited liability partnership

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, whether the person representing himself or represented to be a partner does or does not know that the representatives has reached the person so giving credit.

UNLIMITED LIABILITY-SECTION 30**1) Defraud**

Defraud the creditors of LLP

2) Unlimited liability

The liability of LLP and Partners are unlimited

3) Penalty

Every party who has been knowingly a party shall be punishable

- a) Imprisonment- Extend upto 2 years
- b) Fine- Rs 50,000 to Rs 5,00,000

- 4) LLP or partner or designated partner shall be liable to pay compensation to the person who has suffered loss

WHISTLE BLOWING-SECTION 31

- 1) The Court or Tribunal may reduce or waive any penalty imposed on any partner or employee of a LLP, if it satisfied that

a) Useful Information

Provided useful information during investigation of such LLP

b) Information lead to conviction

Information given by any partner or employee leads to LLP or any partner or employee of such LLP being convicted under this Act or any other Act

- 2) No discharge, demotion, suspension, threat, harassment or in any other manner discrimination merely because of his providing information or causing information to be provided by him

FORMS OF CONTRIBUTION-SECTION 32

- 1) A partner may contribute to the LLP-
 - a) Tangible or intangible property; or
 - b) Moveable or immovable property; or
 - c) other benefit including money, promissory notes, other agreements to contribute cash or property and contracts for services performed or to be performed
- 2) It shall be valued by CA or practicing Cost Accountant or by approved valuer

AUDIT OF ACCOUNTS-RULE 24(8)

- 1) **Compulsory Audit**
Accounts of every LLP shall be audited
- 2) **No Audit**
Contribution-Does not exceed Rs 25 lakh
Turnover- Does not exceed Rs 40 lakh
- 3) **Voluntary Audit**
Partners if want can get the audit done

MAINTENANCE OF BOOKS OF ACCOUNTS, OTHER RECORDS AND AUDIT ETC-SECTION 34

- 1) LLP to maintain proper books of account relating to its affairs for each year
- 2) File and of an annual Statement of Account and solvency with the Registrar
- 3) The Central Government is given power to exempt any class or classes of LLP from the requirements of this section
- 4) Books of accounts contains
 - a) **Cash/ Bank Book**
Particulars of all sums of money received and expended by the LLP and the matters in respect of which the receipt and expenditure takes place;
 - b) **Asset and Liabilities**
Record of the assets and liabilities of the LLP
 - c) **Inventory Record**
Cost of goods purchased, inventories, work-in-progress, finished goods and cost of goods sold;
 - d) **Other Particulars**
Any other particulars which the partners may decide
- 5) **Tenure for preservation**
Books of accounts shall be preserved for 8 years

APPOINTMENT OF AUDITOR

- 1) **Eligible**
A Chartered Accountant in practice is qualified for appointment as an auditor
- 2) **Term**
The auditor(s) shall be appointed for each financial year of the LLP
- 3) **Appointment**
The designated partners may appoint an auditor(s)
 - a) **First Financial year**
Appoint before the end of the first financial year
 - b) **Other Financial Year**
Appoint at least 30 days prior to the end of each financial year
 - c) **Casual Vacancy**

Fill the casual vacancy in the office of auditor

d) Removal of auditor

Fill up the vacancy caused by removal of an auditor

4) Designated Partner failed to appoint

The partners may appoint an auditor or auditors.

ANNUAL RETURN-SECTION 35

1) Form

Form 11

2) No certification of CS in practice

a) **Turnover**- Upto Rs Rs 5 crore or

b) **Contribution**- Upto Rs 50 lakh

Annual Return shall be accompanied with a certificate from a designated partner

3) Other Cases

Accompanies with a certificate from a Company Secretary in practice

4) Penalty

LLP fails to comply with filing of Annual Return

Fine- Rs10,000 to Rs1,00,000

INSPECTION OF DOCUMENTS-SECTION 36

Following documents of LLP shall be available with the Registrar for inspection by any person on payment of fee

- 1) Incorporation document
- 2) Names of partners and changes, if any made therein
- 3) Statement of account and solvency and
- 4) Annual return.

PENALTY FOR FALSE STATEMENT-SECTION 37

- 1) Person makes false statement
- 2) Its is relating to material particular
- 3) Related to any return, statement or any document
- 4) Omits any material knowledge
- 5) Punishment
 - a) Imprisonment- upto 2 years and

- b) Fine- Rs 1 lakh to Rs 5 lakh

POWERS OF REGISTRAR-SECTION 38

1) Obtain information

Registrar can obtain information from present or former partner, designated partner or employee of LLP

2) Issue Summon

Registrar shall have power to summon that person to appear before him or any public officer

3) Fail to comply with summon

Fine – Rs 200 to Rs 25000

COMPOUNDING OF OFFENCES-SECTION 39

- 1) Central Government may compound any offence
- 2) Compounding of offence only for offence which is punishable with fine only

PRESERVATION OF RECORDS

1) Preserved Permanently

- a) Incorporation document
- b) Notice of situation of registered office
- c) Information with regard to LLP agreement or any change made therein
- d) Notice of other address of any LLP partnership at which documents to be served

2) Preservation for 21 years

All papers, registers, refund orders and correspondence relating to the LLP liquidation accounts;

3) Preservation for 5 years

a) Government Order

Copies of Government orders relating to LLP

b) Registration Documents

registered documents of LLP which have been fully wound up and finally dissolved together with the correspondence relating to such LLP

c) Legal proceedings

papers relating to legal proceedings from the date of disposal of the case and appeal; if any

- d) Statistical Data**
Copies of statistical returns furnished to Government
 - e) Correspondence**
Correspondence relating to Central Government , tribunal or relating to complaints
 - f) Statement of Compliance**
Statement of compliance with the requirements of the Act by Advocate, Company Secretary or Chartered Accountant or Cost Accountant
 - g) Notice of Cessation ship**
Notice of a person ceasing to be a partner and any change in the name or address of a partner
 - h) Striking off Documents**
Registered documents relating to LLP struck off
 - i) Annual Return**
 - j) Statement of Solvency**
 - k) Copy of Order of dissolution**
 - l) Consent to act as partner**
- 4) Reservation of three years**
- a) All books, records and papers, other than those specified above;
 - b) Routine correspondence regarding payment of fees, additional filing fees and correspondences about the return of documents.

DESTRUCTION OF OLD RECORDS-RULE 27

- 1) The records in the office of the Registrar may be destroyed after the expiry of the period
- 2) The Registrar shall maintain a Register of destroyed documents
- 3) Register shall be maintained in two parts
- 4) Part 1- Brief particulars of records destroyed
Part 2- Certify therein the date and mode of destructions

CONVERSION OF FIRM INTO LLP

1) Provision

Firm shall be bound by the provisions of the second schedule

2) Consent

All partner consent will be required

3) Additional Partner

No other person will be allowed to be a partner in LLP after its conversion

4) Application to Registrar

- a) Form 17 along with the following particulars
 - i) Name and Registration number of firm
 - ii) Date when the firm is registered
- b) Incorporation Documents and Statement

5) Certificate from Registrar

Registrar shall register the documents and issue certificate in Form No 19

6) Intimate Registrar of Firms

The LLP shall within 15 days inform the concerned Registrar of Firms about the conversion and the particulars of the LLP

7) May refuse and file appeal

The Registrar may refuse registration if he is not satisfied with the particulars or other information furnished.

In such cases appeal may be filed before the Tribunal.

CONVERSION OF PRIVATE LIMITED COMPANY INTO LLP

1) Criteria

- a) No security interest in its asset
- b) All partners shall become shareholders and no one else

2) Certificate of Registration

The Registrar shall issue a certificate of registration in Form No. 19

3) Intimate to ROC

LLP shall inform the concerned ROC within 15 days of the date of registration

4) Registrar not satisfied

Registrar is not satisfied with the particulars or other information furnished the Registrar may refused to register

5) Appeal

Appeal may be made before the Tribunal against this order

CONVERSION FROM UNLISTED PUBLIC COMPANY INTO LLP**REGISTRATION IN RELATING TO PROPERTY**

- 1) Property is registered with authority
- 2) LLP shall take necessary steps to notify authority of the conversion

PENDING PROCEEDINGS

- 1) Proceedings by or against the partnership firm/company
- 2) Proceedings pending before any court or tribunal

CONTINUANCE OF CONVICTION, RULING ,ORDER OF JUDGEMENT

Any conviction, ruling, order or judgment of any Court, Tribunal or other authority in favor of or against the firm/company may be enforced by or against the LLP

Existing Agreement**Continuance of Employment**

Every contract of employment shall continue in force on or after the date of registration

EXISTING APPOINTMENT, AUTHORITY OR POWER

- 1) Every agreement to which the firm/company was a party immediately
- 2) The LLP will be the party to such an agreement instead of the company
- 3) All deeds, contracts, schemes, bonds, agreements, applications, instruments and arrangements subsisting immediately before the date of registration relating to the company or to which the company is a party shall continue in force