

# Limited Liability Partnership

## Lesson 3

### KEY CONCEPTS

- Limited Liability Partnership ■ LLP Agreement ■ Designated Partner ■ Small Limited Liability Partnership

### Learning Objectives

#### To understand:

- The concept of LLP and its features
- Formation and Registration of LLP
- LLP Agreement and its essential clauses
- Provisions on maintenance of Books of Account, Records and Audit
- Compliance related to Annual Filing of LLP

### Lesson Outline

- Introduction
- Regulatory Framework - LLP Act, 2008
- Salient Features of “Limited Liability Partnership” or “LLP”
- Important Definitions
- Nature of Limited Liability Partnership
- Partners
- Minimum Number of Partners
- Designated Partners
- Liabilities of Designated Partners
- Changes in Designated Partners
- Incorporation of Limited Liability Partnership
- Incorporation Document
- Incorporation by Registration
- Effect of Registration
- Partners and their Relations
- Cessation of Partnership Interest
- Registration of Changes in Partners
- Extent and Limitation of Liability of Limited Liability Partnership and Partners
- Whistle Blowing
- Contributions
- Financial Disclosures
- Maintenance of Books of Account, other Records and Audit
- Annual Return
- Compounding of Offences
- Lesson Round-Up
- Test Yourself
- List of Further Readings
- Other References

## REGULATORY FRAMEWORK

- The Limited Liability Partnership Act, 2008
- The Limited Liability Partnership Rules, 2009

## INTRODUCTION

The concept of LLPs emerged as a hybrid form of business entity that combines the flexibility and benefits of a partnership with the limited liability protection typically associated with a corporation. The need for dedicated legislation for LLPs arose due to the limitations and complexities associated with traditional partnerships. LLP has become an alternative business vehicle to carry out business as it combines the characteristics of a private company and a conventional partnership. The difference between LLP & traditional partnership firms is under a traditional partnership firm, every partner is liable, jointly and severally, with all the other partners for all acts of the firm done while he is a partner. Under the LLP structure, the liability of the partner is limited to his agreed contribution. Additionally, individual partners are not held responsible for the independent or unauthorized actions of their counterparts. This provision ensures that partners can be protected from collective liability resulting from the wrongful acts or misconduct of another partner.

The LLP is an alternative operating vehicle that offers the distinctive feature of limited liability for its members while maintaining an open and flexible internal structure based on mutual understanding and a duly executed agreement. This flexibility makes LLP a suitable vehicle for small and medium enterprises and investment venture capitalists, which allows them to provide services with minimum cost and risk, thereby enhancing competitiveness in the global market and making it an attractive choice for their business endeavors and that is why nowadays many start-ups choose LLP over private companies.

The increasing popularity of LLPs has been instrumental in encouraging unorganized and unincorporated structures to shift towards an organized and incorporated business structure. Recognizing this trend, the LLP Act has undergone several amendments since its inception. These amendments aim to improve the ease of business and ensure that LLPs operate on a level playing field with companies. In recent years, the growth of LLPs in India has been significant and showcases a positive trajectory.

## LIMITED LIABILITY PARTNERSHIP ACT, 2008

Chapter I	Preliminary	Sections 1 to 2
Chapter II	Nature Of LLP	Sections 3 to 10
Chapter III	Incorporation of Limited LLP And Matters Incidental to it	Sections 11 to 21
Chapter IV	Partners and Their Relations	Sections 22 to 25
Chapter V	Extent and Limitation of Liability of LLP And Partners	Sections 26 to 31
Chapter VI	Contributions	Sections 32 to 33
Chapter VII	Financial Disclosures	Sections 34 to 41
Chapter VIII	Assignment and Transfer of Partnership Rights	Section 42
Chapter IX	Investigation	Sections 43 to 54
Chapter X	Conversion Into LLP	Sections 55 to 58
Chapter XI	Foreign LLPs	Section 59

Chapter XII	Compromise, Arrangement or Reconstruction of LLP	Sections 60 to 62
Chapter XIII	Winding Up and Dissolution	Sections 63 to 65
Chapter XIV	Miscellaneous	Sections 66 to 80
The First Schedule	Provisions regarding matters relating to mutual rights and duties of partners and LLP and its partners applicable in the absence of any agreement on such matters	
The Second Schedule	Conversion from Firm into Limited LLP	
The Third Schedule	Conversion from Private Company Into LLP	
The Fourth Schedule	Conversion from Unlisted Public Company Into LLP	

### SALIENT FEATURES OF “LIMITED LIABILITY PARTNERSHIP” OR “LLP”

- The name of every LLP must bear the words “Limited Liability Partnership” or “LLP”.
- Any two or more persons associated with carrying on a lawful business with a view to profit may by subscribing their names to an incorporation document and filing the same with the Registrar, form LLP.
- LLP is a suitable structure for medium-sized businesses and commercial activities such as manufacturing, trading, export, consultancy, professional services, education, joint ventures, and similar endeavors, unless specifically prohibited by notification.
- The incorporation procedure of LLP is, to a certain extent, similar to a company. LLP’s incorporation documents (parallel to the memorandum) and LLP agreement (parallel to Articles of Association) are required to be filed online.
- Minimum two partners, no limit on a maximum number of partners. A minimum of two partners should be designated as ‘Designated Partners’, out of which one should be a resident of India to fulfil day-to-day statutory obligations under LLP Act. However, other partners are not normally liable except in cases of fraud etc.
- LLP is a body corporate which must be registered with the Registrar having a distinct name, and such name shall not be the same as other LLP, company or partnership firm already registered.
- It is a separate legal entity and a simple form of a partnership firm which holds the property in its name; thus, any type of debt of the LLP shall be borne by itself, and partners are separated from such obligations.
- LLP itself decide the relationship between the partners through its agreement thus, give the liberty to the partners to set the terms and conditions for effective business; however, subject to the LLP Act and Rules made there under.
- LLP activities are controlled and managed by its partner, whose name is specified in the incorporated documents. Designated partners have the fiduciary responsibility to carry on the day-to-day activities of the LLP.

- The right and duties of the LLP and its partners are defined in the LLP agreement.
- There is no limit on the capital contribution quantum that is to be made available in the business, just like a company where there is no requirement of the paid-up capital unless the context is otherwise provided.
- In the absence of the LLP agreement or any provisions therein, then the majority number of partners decide the specific matter by having one vote one partner. Also, material matters like the change of name, change in object or change in the registered office of the LLP etc., cannot be made unless the consent of all the partners.
- As the LLP itself is liable for the debts incurred to it to the full extent of its assets, this means that partners will be liable only for the limited contribution they have made to those assets, and likewise, partners may also be liable for their wrongful or fraudulent activity. It means that the personal asset of the partner of the LLP will not be at risk for the wrongful acts of the LLP or other partners. Thus, the separate legal entity limits the liability of its partners.
- LLP is also required to notify the Registrar if there is any change in name, registered office, terms and conditions of the LLP agreement. Also, it is required to submit the financials and annual return to the Registrar.
- LLP must display its name, place, registration number, and registered office address on all the conspicuous places of the business.
- LLP is capable of creating a charge over its movable and immovable property, thus enabling financial institutes to obtain finance. Also, the partners can lend money to the LLP in their personal capacity.
- Also, foreign direct investment is allowed in LLP, subject to the terms and conditions.
- Under the provisions of the LLP Act, a partnership firm, private company, or unlisted public company can be converted into an LLP.
- LLP can also take actions like compromise, arrangements, reconstructions, mergers, and amalgamations. Similarly, there are strike-off, winding up, dissolution, inspection and investigation provisions.
- Accounts are required to be maintained by LLP.
- If necessary, the Central Government possesses the authority to examine the operations of an LLP by appointing a qualified Inspector for the designated objective of investigation.

## IMPORTANT DEFINITIONS

### Body Corporate

Body Corporate means a company as defined in section 2(20) of the Companies Act, 2013 and includes

- (i) a limited liability partnership registered under this Act;
- (ii) a limited liability partnership incorporated outside India; and
- (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; and
- (iii) any other body corporate (not being a company as defined in section 2 (20) of the Companies Act,

2013 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. [Section 2(1)(d)]

### **Business**

Business includes every trade, profession, service and occupation except any activity which the Central Government may, by notification, exclude. [Section 2(1)(e)]

### **Designated Partner**

Designated partner means any partner designated as such pursuant to section 7. [Section 2(1)(j)]

### **Entity**

Entity means any body corporate and includes, for the purposes of sections 18, 46, 47, 48, 49, 50, 52 and 53, a firm set-up under the Indian Partnership Act, 1932. [Section 2(1) (k)]

### **Financial Year**

Financial year, in relation to a limited liability partnership, means the period from the 1st day of April of a year to the 31st day of March of the following year. However, in the case of a limited liability partnership incorporated after the 30th day of September of a year, the financial year may end on the 31st day of March of the year next following that year. [Section 2(1) (l)]

### **Foreign Limited Liability Partnership**

Foreign limited liability partnership means a limited liability partnership formed, incorporated or registered outside India which establishes a place of business within India. [Section 2(1)(m)]

### **Limited Liability Partnership**

Limited liability partnership means a partnership formed and registered under this Act. [Section 2(1) (n)]

### **Limited Liability Partnership Agreement**

Limited liability partnership agreement means any written agreement between the partners of the limited liability partnership or between the limited liability partnership and its partners which determines the mutual rights and duties of the partners and their rights and duties in relation to that limited liability partnership. [Section 2(1) (o)]

### **Partner**

Partner, in relation to a limited liability partnership, means any person who becomes a partner in the limited liability partnership in accordance with the limited liability partnership agreement. [Section 2(1) (q)]

### **Small Limited Liability Partnership**

Small limited liability partnership means a limited liability partnership—

- (i) the contribution of which, does not exceed twenty-five lakh rupees or such higher amount, not exceeding five crore rupees, as may be prescribed; and
- (ii) the turnover of which, as per the Statement of Accounts and Solvency for the immediately preceding financial year, does not exceed forty lakh rupees or such higher amount, not exceeding fifty crore rupees, as may be prescribed; or

- (iii) which meets such other requirements as may be prescribed, and fulfils such terms and conditions as may be prescribed. [Section 2(1) (ta)]

## NATURE OF LIMITED LIABILITY PARTNERSHIP

### Limited Liability Partnership to be Body Corporate

According to Section 3 of the LLP Act, 2008, a limited liability partnership is a body corporate formed and incorporated under this Act and is a legal entity separate from that of its partners.

A limited liability partnership shall have perpetual succession.

Any change in the partners of a limited liability partnership shall not affect the existence, rights or liabilities of the limited liability partnership.

It may be noted that the provisions of the Indian Partnership Act, 1932 shall not apply to a limited liability partnership. (Section 4)

## PARTNERS

Partner, in relation to a limited liability partnership, means any person who becomes a partner in the limited liability partnership in accordance with the limited liability partnership agreement.

Section 5 of the Act provides that any individual or body corporate may be a partner in a limited liability partnership.

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.

### Minimum Number of Partners

Section 6 states that every limited liability partnership shall have at least two partners.

If at any time the number of partners of a limited liability partnership is reduced below two and the limited liability partnership carries on business for more than six months while the number is so reduced, the person, who is the only partner of the limited liability partnership during the time that it so carries on business after those six months and has the knowledge of the fact that it is carrying on business with him alone, shall be liable personally for the obligations of the limited liability partnership incurred during that period.

It may be noted that business includes every trade, profession, service and occupation except any activity which the Central Government may, by notification, exclude. [Section 2(1)(e)]

### Designated Partners

Designated Partner means any partner designated as such pursuant to section 7.

Section 7(1) of the Act provides that every limited liability partnership shall have at least two designated partners who are individuals and at least one of them shall be a resident in India.

However, in case of a limited liability partnership in which all the partners are bodies corporate or in which one or more partners are individuals and bodies corporate, at least two individuals who are partners of such limited liability partnership or nominees of such bodies corporate shall act as designated partners.

***It may be noted that the term resident in India means a person who has stayed in India for a period of not less than one hundred and twenty days during the financial year.***

If the incorporation document:

- (a) specifies who are to be designated partners, such persons shall be designated partners on incorporation; or
- (b) states that each of the partners from time to time of limited liability partnership is to be designated partner, every partner shall be a designated partner;

Any partner may become a designated partner by and in accordance with the limited liability partnership agreement and a partner may cease to be a designated partner in accordance with limited liability partnership agreement.

An individual shall not become a designated partner in any limited liability partnership unless he has given his prior consent to act as such to the limited liability partnership in such form and manner as may be prescribed.

Every limited liability partnership shall file with the Registrar the particulars of every individual who has given his consent to act as designated partner in such form and manner as may be prescribed within thirty days of his appointment.

An individual eligible to be a designated partner shall satisfy such conditions and requirements as may be prescribed.

Every designated partner of a limited liability partnership shall obtain a Designated Partners 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.

### Liabilities of Designated Partners

As per Section 8 of the Act, a designated partner shall be-

- (a) responsible for the doing of all acts, matters and things as are required to be done by the limited liability partnership in respect of compliance of the provisions of this Act including filing of any document, return, statement and the like report pursuant to the provisions of this Act and as may be specified in the limited liability partnership agreement; and
- (b) liable to all penalties imposed on the limited liability partnership for any contravention of those provisions.

### Changes in Designated Partners

Section 9 provides that a limited liability partnership may appoint a designated partner within thirty days of a vacancy arising for any reason and provisions of section 7(4) & (5) shall apply in respect of such new designated partner.

It may be noted that if no designated partner is appointed, or if at any time there is only one designated partner, each partner shall be deemed to be a designated partner.

**Punishment for contravention of sections 7 and 9**

Section	Who shall be liable	Provisions contravened by LLP	Max. Penalty for one time contravention	Penalty in case of continuing contravention	
				Per day penalty	Maximum penalty
10(1)	the limited liability partnership and its every partner	Sec 7(1)	ten thousand rupees and	with a further penalty of one hundred rupees for each day after the first during which such contravention continues,	subject to a maximum of one lakh rupees for the limited liability partnership and fifty thousand rupees for every partner of such limited liability partnership.
10(2)	such limited liability partnership and its every designated partner	Sec 7(4)	five thousand rupees and	with a further penalty of one hundred rupees for each day after the first during which such contravention continues,	subject to a maximum of fifty thousand rupees for the limited liability partnership and twenty-five thousand rupees for its every designated partner.
10(3)	such limited liability partnership and its every partner	Sec 7(5) or 9	ten thousand rupees, and	further penalty of one hundred rupees for each day after the first during which such contravention continues,	subject to a maximum of one lakh rupees for the limited liability partnership and fifty thousand rupees for its every partner

**INCORPORATION OF LIMITED LIABILITY PARTNERSHIP****Incorporation Document**

Section 11(1) of the Act states that for a limited liability partnership 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 registered office of the limited liability partnership is to be situated; and
- (c) there shall be filed along with the incorporation document, a statement in the prescribed form, 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 limited liability partnership 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.

According to Section 11(2) of the Act, the incorporation document shall be:

- (a) filed in Form FiLLiP with the Registrar having jurisdiction over the State in which the registered office of the limited liability partnership is to be situated along with prescribed fee.
  - If an individual required to be appointed as designated partner does not have a DPIN or DIN, application for allotment of DPIN shall be made in Form FiLLiP.
  - An Application for allotment of DPIN shall not be made by more than five individuals in Form FiLLiP.
  - An Application for reservation of name may be made through Form FiLLiP.
  - Where an applicant had applied for reservation of name under rule 18 in Form RUN-LLP and which has been approved, he may fill the reserved name as the proposed name of limited liability partnership.

Further, the incorporation document shall:

- (b) state the name of the limited liability partnership;
- (c) state the proposed business of the limited liability partnership;
- (d) state the address of the registered office of the limited liability partnership;
- (e) state the name and address of each of the persons who are to be partners of the limited liability partnership on incorporation;
- (f) state the name and address of the persons who are to be designated partners of the limited liability partnership on incorporation;
- (g) contain such other information, as may be prescribed, concerning the proposed LLP..

Where the Registrar, on examining Form FiLLiP, finds that it is necessary to call for further information or finds such application or document to be defective or incomplete in any respect, he shall give intimation to the applicant to remove the defects and re-submit the e-form within fifteen days from the date of such intimation given by the Registrar.

After re-submission of the document, if the Registrar still finds that the document is defective or incomplete in any respect, he shall give one more opportunity of fifteen days time to remove such defects or deficiencies.

It may be noted that the total period for re-submission of documents shall not exceed thirty days.

The Certificate of Incorporation of limited liability partnership shall be issued by the Registrar in Form 16 and shall mention Permanent Account Number and Tax Deduction Account Number issued by the Income Tax Department.

### Incorporation by Registration

According to Section 12(1) of the Act, when the requirements imposed by section 11(1)(b) &(c) have been complied with, the Registrar shall retain the incorporation document and, unless the requirement imposed by section 11(1)(a) of that sub-section has not been complied with, he shall, within a period of fourteen days:

- (a) register the incorporation document; and

- (b) give a certificate that the limited liability partnership is incorporated by the name specified therein.

The certificate issued shall be signed by the Registrar and authenticated by his official seal.

The certificate shall be conclusive evidence that the limited liability partnership is incorporated by the name specified therein.

### **Registered Office of Limited Liability Partnership and Change therein**

Section 13 of the Act states that every limited liability partnership shall have a registered office to which all communications and notices may be addressed and where they shall be received.

A document may be served on a limited liability partnership 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 manner, as may be prescribed, at the registered office and any other address specifically declared by the limited liability partnership for the purpose in such form and manner as may be prescribed.

A limited liability partnership 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.

If any default is made in complying with the requirements of this section, the limited liability partnership and its every partner shall be liable to a penalty of five hundred rupees for each day during which the default continues, subject to a maximum of fifty thousand rupees for the limited liability partnership and its every partner.

According to LLP Rules, Rule 16 provides further requirements w.r.t. registered office of LLP and changes therein as follows:

- (1) A limited liability partnership shall give an address for service of documents within the jurisdiction of the Registrar where its registered office is situate. Such address shall include the postal code and e-mail address.
- (2) The limited liability partnership, may, in addition to the registered office address, declare any other address as its address for service of documents, under sub-section (2) of section 13, in the manner as laid down in the limited liability partnership agreement. Where the limited liability partnership agreement does not provide for such manner, consent of all partners shall be required for declaring any other address as the address for service of documents.
- (3) The intimation of other address for service of documents to LLP shall be given to the Registrar in Form 12, within thirty days of complying with the requirements of sub-rule (2) above along with the fee as mentioned in Annexure 'A'.
- (4) The effective date for the service of documents to LLP at the other address declared by the LLP cannot be prior to the date of filing of document under sub rule (3).

### **Effect of Registration**

Section 14 of the Act provides that on registration, a limited liability partnership shall, by its name, be capable of

- (a) suing and being sued;
- (b) acquiring, owning, holding and developing or disposing of property, whether movable or immovable, tangible or intangible;
- (c) having a common seal, if it decides to have one; and
- (d) doing and suffering such other acts and things as bodies corporate may lawfully do and suffer.

**Name**

Section 15 of the Act provides for the specifications w.r.t. name of LLP as follows:

- (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 limited liability partnership 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 limited liability partnership or a company or a registered trade mark of any other person under the Trade Marks Act, 1999.

**Reservation of name**

Section 16 of the Act provides for reservation of name by the Registrar if he is satisfied, subject to the rules prescribed by the Central Government in the matter, that the name to be reserved is not one which may be rejected on any ground referred to in sub-section (2) of section 15. The name may be reserved for a period of three months from the date of intimation by the Registrar.

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 limited liability partnership; or
- (b) the name to which a limited liability partnership proposes to change its name.

A foreign LLP or a foreign company may on payment of prescribed fee apply in Form 25 to the Registrar for reserving its existing name by which it is registered in the country of its regulation or incorporation. It is provided that such reservation shall be valid for three years but may be renewed on a fresh application along with payment of fee as may be prescribed.

**CHANGE OF NAME OF LLP**

According to section 17 of the Act, notwithstanding anything contained in sections 15 and 16, if through inadvertence or otherwise, a limited liability partnership, on its first registration or on its registration by a new body corporate, is registered by a name which is identical with or too nearly resembles to—

- (a) that of any other limited liability partnership 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 limited liability partnership or proprietor referred to in clauses (a) and (b) respectively or a company, the Central Government may direct that such limited liability partnership to change its name or new name within a period of three months from the date of issue of such direction:

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

Where a limited liability partnership changes its name or obtains a new name under sub-section (1), it shall within a period of fifteen 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 thirty days of such change in the certificate of incorporation, such limited liability partnership shall change its name in the limited liability partnership agreement.

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

It is provided that nothing contained in this sub-section shall prevent a limited liability partnership from subsequently changing its name in accordance with the provisions of section 16.

### **Change of Registered Name**

Section 19 of the Act provides that any limited liability partnership may change its name registered with the Registrar by filing with him a notice of such change in such form and manner and on payment of such fees as may be prescribed.

#### **According to Rule 20 of the LLP Rules, 2009**

- (1) The limited liability partnership may change its name by following the procedure as laid down in the limited liability partnership agreement. Where the limited liability partnership agreement does not provide such procedure, consent of all partners shall be required for changing the name of the limited liability partnership.
- (2) Notice of change of name shall be given to the Registrar in Form 5, within 30 days of complying with requirement of sub-rule (1), along with a fee as mentioned in Annexure 'A'.
- (3) The Registrar on being satisfied that the changed name is the one as reserved by him shall issue a fresh certificate of incorporation in the new name and the changed name shall be effective from the date of such certificate.

### **Penalty for improper use of words Limited Liability Partnership or LLP**

Section 20 of the Act provides for penalty for improper use of words LLP as follows:

If any person or persons carry on business under any name or title of which the words Limited Liability Partnership or LLP or any contraction or imitation thereof is or are the last word or words, that person or each of those persons shall, unless duly incorporated as limited liability partnership, be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees.

### **Publication of Name and Limited Liability**

According to section 21 of the Act:-

- (1) Every limited liability partnership shall ensure that its invoices, official correspondence and publications bear the following, namely:
  - (a) the name, address of its registered office and registration number of the limited liability partnership; and
  - (b) a statement that it is registered with limited liability.
- (2) If the limited liability partnership contravenes the provisions of this section, the limited liability partnership shall be liable to a penalty of ten thousand rupees.

## PARTNERS AND THEIR RELATIONS

### Eligibility to be Partners

According to Section 22 of the Act, on the incorporation of a limited liability partnership, the persons who subscribed their names to the incorporation document shall be its partners and any other person may become a partner of the limited liability partnership by and in accordance with the limited liability partnership agreement.

### Relationship of Partners

Section 23 provides that save as otherwise provided by this Act, the mutual rights and duties of the partners of a limited liability partnership, and the mutual rights and duties of a limited liability partnership and its partners, shall be governed by **the limited liability partnership agreement** between the partners, or between the limited liability partnership and its partners.

It may be noted that Limited Liability Partnership Agreement means any written agreement between the partners of the limited liability partnership or between the limited liability partnership and its partners which determines the mutual rights and duties of the partners and their rights and duties in relation to that limited liability partnership. {Section 2(1) (o)}

The limited liability partnership agreement and any changes, if any, made therein shall be filed with the Registrar in prescribed form, manner and accompanied by such prescribed fees.{Section 23(2)}

Rule 21 provides that For the purposes of sub-section (2) of section 23, every limited liability partnership shall file information with regard to the limited liability partnership agreement in Form 3 with the Registrar within thirty days of the date of incorporation alongwith the fee as provided in Annexure "A":

Further Rule provides that any change made in the limited liability partnership agreement shall be filed in Form 3 within thirty days of such change alongwith the fee as provided in Annexure "A".

An agreement in writing made before the incorporation of a limited liability partnership between the persons who subscribe their names to the incorporation document may impose obligations on the limited liability partnership, provided such agreement is ratified by all the partners after the incorporation of the limited liability partnership. .{Section 23(3)}

Rule 21 provides for sub-section (3) that every limited liability partnership shall get the limited liability partnership agreement, referred to in that sub-section, rectified by all the partners immediately after incorporation and shall file information contained therein in Form 3 with the Registrar within thirty days of the incorporation of the limited liability partnership alongwith the fee as provided in Annexure A.

In the absence of agreement as to any matter, the mutual rights and duties of the partners and the mutual rights and duties of the limited liability partnership and the partners shall be determined by the provisions relating to that matter as are set out in the First Schedule.

***It may be noted that the First Schedule provides provisions regarding matters relating to mutual rights and duties of partners and Limited Liability Partnership and Its partners applicable in the absence of any agreement on such matters. The matters are as under:***

1. The mutual rights and duties of the partners and the mutual rights and duties of the limited liability partnership and its partners shall be determined, subject to the terms of any limited liability partnership agreement or in the absence of any such agreement on any matter, by the provisions in this First Schedule.
2. All the partners of a limited liability partnership are entitled to share equally in the capital, profits and losses of the limited liability partnership.

3. The limited liability partnership shall indemnify each partner in respect of payments made and personal liabilities incurred by him.
  - (a) in the ordinary and proper conduct of the business of the limited liability partnership; or
  - (b) in or about anything necessarily done for the preservation of the business or property of the limited liability partnership.
4. Every partner shall indemnify the limited liability partnership for any loss caused to it by his fraud in the conduct of the business of the limited liability partnership.
5. Every partner may take part in the management of the limited liability partnership.
6. No partner shall be entitled to remuneration for acting in the business or management of the limited liability partnership.
7. No person may be introduced as a partner without the consent of all the existing partners.
8. Any matter or issue relating to the limited liability partnership shall be decided by a resolution passed by a majority in number of the partners, and for this purpose, each partner shall have one vote. However, no change may be made in the nature of business of the limited liability partnership without the consent of all the partners.
9. Every limited liability partnership shall ensure that decisions taken by it are recorded in the minutes within thirty days of taking such decisions and are kept and maintained at the registered office of the limited liability partnership.
10. Each partner shall render true accounts and full information of all things affecting the limited liability partnership to any partner or his legal representatives.
11. If a partner, without the consent of the limited liability partnership, carries on any business of the same nature as and competing with the limited liability partnership, he must account for and pay over to the limited liability partnership all profits made by him in that business.
12. Every partner shall account to the limited liability partnership for any benefit derived by him without the consent of the limited liability partnership from any transaction concerning the limited liability partnership, or from any use by him of the property, name or any business connection of the limited liability partnership.
13. No majority of the partners can expel any partner unless a power to do so has been conferred by express agreement between the partners.
14. All disputes between the partners arising out of the limited liability partnership agreement which cannot be resolved in terms of such agreement shall be referred for arbitration as per the provisions of the Arbitration and Conciliation Act, 1996.

### Cessation of Partnership Interest

As per Section 24 of the Act, a person may cease to be a partner of a limited liability partnership in accordance with an agreement with the other partners or, in the absence of agreement with the other partners as to cessation of being a partner, by giving a notice in writing of not less than thirty days to the other partners of his intention to resign as partner.

A person shall cease to be a partner of a limited liability partnership:

- (a) on his death or dissolution of the limited liability partnership; or
- (b) if he is declared to be of unsound mind by a competent Court; or
- (c) if he has applied to be adjudged as an insolvent or declared as an insolvent.

Where a person has ceased to be a partner of a limited liability partnership (hereinafter referred to as former partner), the former partner is to be regarded (in relation to any person dealing with the limited liability partnership) as still being a partner of the limited liability partnership unless:

- (a) the person has notice that the former partner has ceased to be a partner of the limited liability partnership; or
- (b) notice that the former partner has ceased to be a partner of the limited liability partnership has been delivered to the Registrar.

The cessation of a partner from the limited liability partnership does not by itself discharge the partner from any obligation to the limited liability partnership or to the other partners or to any other person which he incurred while being a partner.

Where a partner of a limited liability partnership ceases to be a partner, unless otherwise provided in the limited liability partnership agreement, the former partner or a person entitled to his share in consequence of the death or insolvency of the former partner, shall be entitled to receive from the limited liability partnership:

- (a) an amount equal to the capital contribution of the former partner actually made to the limited liability partnership; and
- (b) his right to share in the accumulated profits of the limited liability partnership,

after the deduction of accumulated losses of the limited liability partnership, determined as at the date the former partner ceased to be a partner.

A former partner or a person entitled to his share in consequence of the death or insolvency of the former partner shall not have any right to interfere in the management of the limited liability partnership.

### Registration of Changes in Partners

Section 25 provides that every partner shall inform the limited liability partnership of any change in his name or address ( in Form 6) within a period of fifteen days of such change. {Section 25(1)}

A limited liability partnership shall:

- (a) where a person becomes or ceases to be a partner, file a notice with the Registrar within thirty days from the date he becomes or ceases to be a partner; and
- (b) where there is any change in the name or address of a partner, file a notice with the Registrar within thirty days of such change. {Section25(2)}

A notice filed with the Registrar:

- (a) shall be in such form (Form 4) and accompanied by such fees as may be prescribed;
- (b) shall be signed by the designated partner of the limited liability partnership and authenticated in a manner as may be prescribed i.e. the form shall be accompanied by a certificate from a Chartered Accountant in practice or Cost Accountant in practice or a Company Secretary in practice that he has verified the particulars from the books and records of the limited liability partnership and found them to be true and correct.and
- (c) if it relates to an incoming partner, shall contain a statement by such partner that he consents to becoming a partner, signed by him and authenticated in the manner as may be prescribed.

Any person who ceases to be a partner of a limited liability partnership may himself file with the Registrar the notice of his cessation.if he has reasonable cause to believe that the limited liability partnership may not

file the notice with the Registrar and in case of any such notice filed by a partner, the Registrar shall obtain a confirmation to this effect from the limited liability partnership unless the limited liability partnership has also filed such notice.

It may be noted that where no confirmation is given by the limited liability partnership within fifteen days, the Registrar shall register the notice made by a person ceasing to be a partner under this section.

Sub-section (4) provides for penalty in case if the limited liability partnership contravenes the provisions of sub-section (2), the limited liability partnership and its every designated partner shall be liable to a penalty of ten thousand rupees.]

According to sub-section (5), if the contravention referred to in sub-section (1) is made by any partner of the limited liability partnership, such partner shall be liable to a penalty of ten thousand rupees.

## **EXTENT AND LIMITATION OF LIABILITY OF LIMITED LIABILITY PARTNERSHIP AND PARTNERS**

### **Partner as Agent**

Section 26 states that every partner of a limited liability partnership is, for the purpose of the business of the limited liability partnership, the agent of the limited liability partnership, but not of other partners.

### **Extent of Liability of Limited Liability Partnership**

Section 27 of the Act provides that a limited liability partnership is not bound by anything done by a partner in dealing with a person if:

- (a) the partner in fact has no authority to act for the limited liability partnership in doing a particular act; and
- (b) the person knows that he has no authority or does not know or believe him to be a partner of the limited liability partnership.

The limited liability partnership is liable if a partner of a limited liability partnership is liable to any person as a result of a wrongful act or omission on his part in the course of the business of the limited liability partnership or with its authority.

An obligation of the limited liability partnership whether arising in contract or otherwise, shall be solely the obligation of the limited liability partnership.

The liabilities of the limited liability partnership shall be met out of the property of the limited liability partnership.

### **Extent of liability of partner**

Section 28 of the Act provides for the extent of liability of partner as follows:

- (1) A partner is not personally liable, directly or indirectly for an obligation referred to in sub-section (3) of section 27 solely by reason of being a partner of the limited liability partnership.
- (2) The provisions of sub-section (3) of section 27 and sub-section (1) of this section shall not affect the personal liability of a partner for his own wrongful act or omission, but a partner shall not be personally liable for the wrongful act or omission of any other partner of the limited liability partnership.

### **Holding out**

Section 29 of the Act lays down liability of a partner on the principle of holding out as follows:

- (1) 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 limited liability partnership is liable to any person who has

on the faith of any such representation given credit to the limited liability partnership, whether the person representing himself or represented to be a partner does or does not know that the representation has reached the person so giving credit:

Provided that where any credit is received by the limited liability partnership as a result of such representation, the limited liability partnership shall, without prejudice to the liability of the person so representing himself or represented to be a partner, be liable to the extent of credit received by it or any financial benefit derived thereon.

- (2) Where after a partners death the business is continued in the same limited liability partnership name, the continued use of that name or of the deceased partners name as a part thereof shall not of itself make his legal representative or his estate liable for any act of the limited liability partnership done after his death.

### Unlimited Liability in case of Fraud

According to Section 30(1) of the Act, in the event of an act carried out by a limited liability partnership, or any of its partners, with intent to defraud creditors of the limited liability partnership or any other person, or for any fraudulent purpose, the liability of the limited liability partnership and partners who 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 limited liability partnership.

However, in case any such act is carried out by a partner, the limited liability partnership is liable to the same extent as the partner unless it is established by the limited liability partnership that such act was without the knowledge or the authority of the limited liability partnership.

Where any business is carried on with such intent or for such purpose as mentioned in Section 30(1), every person who was knowingly a party to the carrying on of the business in the manner aforesaid shall be punishable with imprisonment for a term which may extend to five years and with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees.

Where a limited liability partnership or any partner or designated partner or employee of such limited liability partnership has conducted the affairs of the limited liability partnership in a fraudulent manner, then without prejudice to any criminal proceedings which may arise under any law for the time being in force, the limited liability partnership and any such partner or designated partner or employee shall be liable to pay compensation to any person who has suffered any loss or damage by reason of such conduct.

It may be noted that such limited liability partnership shall not be liable if any such partner or designated partner or employee has acted fraudulently without knowledge of the limited liability partnership.

### Whistle Blowing

Section 31(1) of the Act states that the Court or Tribunal may reduce or waive any penalty leviable against any partner or employee of a limited liability partnership, if it is satisfied that:

- (a) such partner or employee of a limited liability partnership has provided useful information during investigation of such limited liability partnership; or
- (b) when any information given by any partner or employee (whether or not during investigation) leads to limited liability partnership or any partner or employee of such limited liability partnership being convicted under this Act or any other Act.

Partner or employee of any limited liability partnership may not be discharged, demoted, suspended, threatened, harassed or in any other manner discriminated against the terms and conditions of his limited

liability partnership or employment merely because of his providing information or causing information to be provided pursuant to Section 31(1).

## CONTRIBUTIONS

### Form of Contribution

Section 32 of the Act provides that a contribution of a partner may consist of tangible, movable or immovable or intangible property or other benefit to the limited liability partnership, including money, promissory notes, other agreements to contribute cash or property, and contracts for services performed or to be performed.

The monetary value of contribution of each partner shall be accounted for and disclosed in the accounts of the limited liability partnership in the manner as may be prescribed.

### Obligation to Contribute

Section 33 of the Act provides that the obligation of a partner to contribute money or other property or other benefit or to perform services for a limited liability partnership shall be as per the limited liability partnership agreement.

A creditor of a limited liability partnership, which extends credit or otherwise acts in reliance on an obligation described in that agreement, without notice of any compromise between partners, may enforce the original obligation against such partner.

## FINANCIAL DISCLOSURES

### Maintenance of Books of Account, other Records and Audit

According to Section 34(1) of the Act the limited liability partnership shall maintain such proper books of account as may be prescribed relating to its affairs for each year of its existence on cash basis or accrual basis and according to double entry system of accounting and shall maintain the same at its registered office for such period as may be prescribed.

Section 34 (2) states that every limited liability partnership shall, within a period of six months from the end of each financial year, prepare a Statement of Account and Solvency for the said financial year as at the last day of the said financial year in such form as may be prescribed, and such statement shall be signed by the designated partners of the limited liability partnership.

Rule 24(1) of the LLP Rules 2009 provides that every limited liability partnership shall keep books of accounts which are sufficient to show and explain the limited liability partnership's transactions and are such as to-

- (a) disclose with reasonable accuracy, at any time, the financial position of the limited liability partnership at that time; and
- (b) enable the designated partners to ensure that any Statement of Account and Solvency prepared under this rule complies with the requirements of the Act.

According to Rule 24(2) of the LLP Rules the books of account shall contain-

- (a) particulars of all sums of money received and expended by the limited liability partnership and the matters in respect of which the receipt and expenditure takes place;
- (b) a record of the assets and liabilities of the limited liability partnership;
- (c) statements of cost of goods purchased, inventories, work-in-progress, finished goods and cost of goods sold; and
- (d) any other particulars which the partners may decide.

Rule 24(3) states that the books of account which a limited liability partnership is required to keep shall be preserved for eight years from the date on which they are made.

As per Rule 24(6) of the LLP Rules, Statement of Account and Solvency shall be signed on behalf of the limited liability partnership by its designated partners. Where the corporate insolvency resolution process has been initiated against the limited liability partnership under the Insolvency and Bankruptcy Code, 2016 or the Limited Liability Partnership Act, 2008 has come under liquidation under the said Code, 2016 or the said Act, 2008, the said Statement of Account and Solvency may be signed on behalf of limited liability partnership by interim resolution professional or resolution professional, or liquidator or limited liability partnership administrator.

Rule 24 (7) of the LLP Rules states that the Statement of Account and Solvency of a limited liability partnership shall be signed by the designated partners of the LLP and each designated partner shall be taken to be a party to its approval unless he shows that he took all reasonable steps to prevent their being approved and signed.

Section 34(3) provides that every limited liability partnership shall file within the prescribed time, the Statement of Account and Solvency prepared pursuant to sub-section (2) with the Registrar every year in such form and manner and accompanied by such fees as may be prescribed.

For the purposes of sub-section (3) of section 34, every limited liability partnership shall file the Statement of Account and Solvency in Form 8 with the Registrar, within a period of thirty days from the end of six months of the financial year to which the Statement of Account and Solvency relates. {Rule 24(4)}

As per Section 34(4) of the Act, the accounts of limited liability partnerships shall be audited in accordance with such rules as may be prescribed.

Provided that the Central Government may, by notification in the Official Gazette, exempt any class or classes of limited liability partnerships from the requirements of this sub-section.

Any limited liability partnership which fails to comply with the provisions of sub-section (3), such limited liability partnership and its designated partners shall be liable to a penalty of one hundred rupees for each day during which such failure continues, subject to a maximum of one lakh rupees for the limited liability partnership and fifty thousand rupees for every designated partner. {Section 34(5)}

Any limited liability partnership which fails to comply with the provisions of sub-section (1), sub-section (2) and sub-section (4), such limited liability partnership shall be punishable with fine which shall not be less than twenty-five thousand rupees, but may extend to five lakh rupees and every designated partner of such limited liability partnership shall be punishable with fine which shall not be less than ten thousand rupees, but may extend to one lakh rupees. {Section 34 (6)}

The statement of Account and Solvency of a LLP shall be signed by the designated partners of the LLP and each designated partner shall be taken to be a party to its approval unless he shows that he took all reasonable steps to prevent their being approved and signed. [Rule 24(7)]

Rule 24(8) of the LLP Rules provides that the accounts of every limited liability partnership shall be audited in accordance with LLP Rules.

However, limited liability partnership whose turnover does not exceed, in any financial year, forty lakh rupees, or whose contribution does not exceed twenty-five lakh rupees shall not be required to get its accounts audited.

Provided further that if partners of such limited liability partnership decide to get the accounts of such LLP audited, the accounts shall be audited in accordance with these rules.

Provided also that where the partners of such LLP do not decide for audit of the accounts of the LLP, such LLP shall include in the Statement of Account and Solvency a statement by the partners to the effect that the partners acknowledge their responsibilities for complying with the requirements of the Act and the Rules with respect to preparation of books of account and a certificate in the form specified in Form 8.

Rule 24(9) of the Rules states that a person shall not be qualified for appointment as an auditor of a limited liability partnership unless he is a Chartered Accountant in practice.

According to Rule 24(10) an auditor or auditors of a limited liability partnership shall be appointed for each financial year of the LLP for auditing its accounts.

Rule 24(11) of the LLP Rules provides that the designated partners may appoint an auditor or auditors-

- (a) at any time for the first financial year but before the end of the first financial year,
- (b) at least 30 days prior to the end of each financial year (other than the first financial year),
- (c) to fill a casual vacancy in the office of auditor, including in the case when the turnover or contribution of a limited liability partnership exceeds the limits specified under sub-rule (8), or
- (d) to fill up the vacancy caused by removal of an auditor.

As per Rule 24(12) the partners may appoint an auditor or auditors where the designated partners have power to appoint under sub-rule (11) and have failed to appoint.

According to Rule 24(13) an auditor or auditors of an LLP shall hold office in accordance with the terms of his or their appointment and shall continue to hold such office till the period-

- (a) the new auditors are appointed, or
- (b) they are re-appointed.

Rule 24(14) provides that where no auditor has been appointed under sub-rule (11), any auditor in office shall be deemed to be re-appointed, unless-

- (a) the limited liability partnership agreement requires actual re-appointment, or
- (b) the majority of partners have determined that he should not be re-appointed and have given a notice to this effect to the LLP.

Provisions of sub-rule (14) shall be applicable without prejudice to the provisions of the rules relating to removal and resignation of auditors. {Rule 24 (15)}

Rule 24(16) states that a notice specified under clause (b) of sub-rule 14-

- (a) may be in hard copy or electronic form, and
- (b) must be authenticated by the person or persons giving it.

Rule 24 (17) provides that the remuneration of an auditor appointed by the limited liability partnership may be fixed by the designated partners or by following the procedure as laid down in the limited liability partnership agreement.

Rule 24 (18) of the LLP Rules states that:

- (a) The partners of a limited liability partnership may remove an auditor from office at any time by following the procedure as laid down in the limited liability partnership agreement.
- (b) Where the limited liability partnership agreement does not provide for removal of an auditor, consent of all the partners shall be required for removal of the auditor from his office.

Rule 24 (19) LLP Rules provides that:

- (a) An auditor of an LLP may resign his office by depositing a notice in writing to that effect at the LLP's registered office.

- (b) Where an auditor is unwilling to be re-appointed, he shall give a notice in writing to that effect at the LLP's registered office, not less than 14 days before the end of the time allowed for appointing the new auditor.
- (c) The notice under clause (a) or (b) is not effective unless it is accompanied by the statement of the circumstances connected with his ceasing to hold office.
- (d) The auditor's term comes to an end as on the date on which the notice is deposited or on such later date as may be specified in the notice.

## ANNUAL RETURN

Section 35(1) of the LLP Act provides that every limited liability partnership shall file an annual return duly authenticated with the Registrar within sixty days of closure of its financial year in such form and manner and accompanied by such fee as may be prescribed.

Every limited liability partnership shall file an annual return with the Registrar in Form 11.

The annual return of an LLP having turnover upto five crore rupees during the corresponding financial year or contribution upto fifty lakh rupees shall be accompanied with a certificate from a designated partner, other than the signatory to the annual return, to the effect that annual return contains true and correct information. In all other cases, the annual return shall be accompanied with a certificate from a **Company Secretary in Practice** to the effect that he has verified the particulars from the books and records of the limited liability partnership and found them to be true and correct.

It may be noted that where the corporate insolvency resolution process has been initiated against the limited liability partnership under the Insolvency and Bankruptcy Code, 2016 or the Limited Liability Partnership Act, 2008 having turnover upto five crore rupees during the corresponding financial year or contribution upto fifty lakh rupees has come under liquidation under the said Code, 2016 or the said Act, 2008, the said annual return may be signed on behalf of limited liability partnership by interim resolution professional or resolution professional, or liquidator or limited liability partnership administrator and no certification by a designated partner shall be required.

As per Section 35 (2) of the Act, if any limited liability partnership fails to file its annual return under sub-section (1) before the expiry of the period specified therein, such limited liability partnership and its designated partners shall be liable to a penalty of one hundred rupees for each day during which such failure continues, subject to a maximum of one lakh rupees for the limited liability partnership and fifty thousand rupees for designated partners.

## Inspection of documents kept by Registrar

According to section 36 of the Act, the incorporation document, names of partners and changes, if any, made therein, Statement of Account and Solvency and annual return filed by each limited liability partnership with the Registrar shall be available for inspection by any person in such manner and on payment of such fee as may be prescribed.

## Penalty for false statement

According to section 37 of the Act, if in any return, statement or other document required by or for the purposes of any of the provisions of this Act, any person makes a statement

- (a) which is false in any material particular, knowing it to be false; or
- (b) which omits any material fact knowing it to be material,

he shall, save as otherwise expressly provided in this Act, be punishable with imprisonment for a term which may extend to two years, and shall also be liable to fine which may extend to five lakh rupees but which shall not be less than one lakh rupees.

The Ministry of Corporate Affairs (MCA) notified **the Limited Liability Partnership (Significant Beneficial Owner) Rules, 2023** (SBO Rules) on November 9, 2023. These rules, conferred under section 79 of the Limited Liability Partnership Act, 2008, aim to regulate and identify significant beneficial owners in Limited Liability Partnerships (LLPs) similar to companies under the Companies Act, 2013.

### Key definitions

<b>“Control”</b>	<p><b>“Control”</b> shall include the right to</p> <ul style="list-style-type: none"> <li>● appoint majority of the designated partners or</li> <li>● control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their contribution or management rights or limited liability partnership agreements or other agreements or in any other manner;</li> </ul>	
<b>Significant beneficial owner:</b>	<p>In relation to a reporting LLP means an individual who acting alone or together or through one or more persons or trust, possesses one or more of the following rights or entitlements in such reporting LLP, namely –</p>	(i) <i>Contribution Criterion:</i> holds indirectly or together with any direct holdings not less than 10% of the contribution;
		(ii) <i>Voting right criterion:</i> holds indirectly or together with any direct holdings, not less than 10% of the voting rights in respect of the management or policy decisions in such LLP;
		(iii) <i>Profit sharing criterion:</i> has right to receive or participate in not less than 10% of the total distributable profits or any other distribution, in a financial year through indirect holdings alone or together with any direct holdings;
		(iv) <i>Significant Influence or Control:</i> has right to exercise or actually exercises significant influence or control, in any manner other than through direct-holdings alone.
	<i>Explanation I -</i>	If an individual does not hold any right or entitlement indirectly under sub-clauses (i), (ii), (iii) or (iv), he shall not be considered to be a SBO.
	<i>Explanation II -</i>	<p>An individual shall be considered to hold a right or entitlement directly in the reporting LLP, if he satisfies any of the following criteria, namely:</p> <ul style="list-style-type: none"> <li>(i) the contribution in the reporting LLP representing such right or entitlement are held in the name of the individual</li> <li>(ii) the individual holds or acquires a beneficial interest in the contribution of the reporting LLP under rule 22B(2) of the LLP Rules, 2009 and has made a declaration in this regard to the reporting LLP i.e. Form LLP 4B/4C.</li> </ul>

	<p><i>Explanation III</i> - An individual shall be considered to hold a right or <b>entitlement indirectly in the reporting LLP</b>, if he satisfies any of the following criteria, in respect of a partner of the reporting LLP, namely:</p>	<p>(i) where the partner of the reporting LLP is a body corporate (whether incorporated or registered in India or abroad) other than a LLP, and the individual,-</p> <p style="padding-left: 40px;">a) holds majority stake in that partner; or</p> <p style="padding-left: 40px;">b) holds majority stake in the ultimate holding company (whether incorporated or registered in India or abroad) of that partner;</p> <p>(ii) where the partner of the reporting LLP is a HUF (through karta), and the individual is the karta of the HUF;</p> <p>(iii) where the partner of the reporting LLP is a partnership entity (through itself or a partner), and the individual,-</p> <p style="padding-left: 40px;">a) is a partner; or b) holds majority stake in the body corporate which is a partner of the partnership entity; or</p> <p style="padding-left: 40px;">c) holds majority stake in the ultimate holding company of the body corporate which is a partner of the partnership entity.</p> <p>(iv) where the partner of the reporting LLP is a trust (through trustee), and the individual,-</p> <p style="padding-left: 40px;">a) is a trustee in case of a discretionary trust or a charitable trust; b) is a beneficiary in case of a specific trust; c) is the author or settlor in case of a revocable trust.</p>
	<p><i>Explanation IV</i> - Where the partner of the reporting LLP is, (i) a pooled investment vehicle; or (ii) an entity controlled by the pooled investment vehicle, based in a jurisdiction which does not fulfil the requirements referred to in clause (v) of Explanation III, the provisions of clause (i) or clause (ii) or clause (iii) or clause (iv) of Explanation III, as the case may be, shall apply.</p>	
	<p><i>Explanation V</i> - If any individual, or individuals acting through any person or trust, act with a common intent or purpose of exercising any rights or entitlements, or exercising control or significant influence, over a reporting LLP, pursuant to an agreement or understanding, formal or informal, such individual, or individuals, acting through any person or trust, as the case may be, <b>shall be deemed to be “acting together”</b>.</p>	
<p><b>Majority stake-Rule 3(f) -</b></p>	<p>“majority stake” means;-</p>	<p>(i) holding <b>more than one-half of the equity share capital</b> in the body corporate; or</p> <p>(ii) <b>holding more than one-half of the contribution in a partnership entity</b> i.e. (partnership firm or LLP); or</p> <p>(iii) <b>holding more than one-half of the voting rights</b> in the body corporate; or</p> <p>(iv) having the <b>right to receive or participate in more than one half of the distributable dividend or distributable profits</b> or any other distribution by the body corporate including a partnership entity as the case may be.</p>

<b>“Partnership entity” means</b>	<ul style="list-style-type: none"> <li>● a partnership firm registered under the Indian Partnership Act, 1932 or a limited partnership registered under the Act:</li> </ul>
<b>“reporting limited liability partnership” means</b>	<ul style="list-style-type: none"> <li>● a limited liability partnership required to comply with the requirements of section 90 of the Companies Act, 2013 as modified by the notification;</li> </ul>
<b>Significant influence</b>	<ul style="list-style-type: none"> <li>● The power to participate, directly or indirectly, in the financial and operating policy decisions of the reporting LLP but is not controlled or jointly controlled by those policies.</li> </ul>
<b>“ultimate holding company”</b>	<ul style="list-style-type: none"> <li>● is a holding company as defined under clause (46) of section 2 of the Companies Act, 2013, which is not a subsidiary of any other body corporate.</li> </ul>

### Obligations on the reporting LLP

#### (i) Identification of SBO

- **Declaration by SBO (individual)** : Every reporting limited liability partnership shall take necessary steps to find out if there is any individual who is a significant beneficial owner, in relation to that reporting limited liability partnership, and if so, identify him and cause such individual to make a declaration in Form No. LLP BEN-1 .
- **Declaration by SBO (non individual partner)** Without prejudice to sub-rule (1), every reporting limited liability partnership shall in all cases where its partner (other than an individual), holds not less than ten per cent. of its- (a) contribution; or (b) voting rights; or (c) right to receive or participate in the distributable profits or any other distribution payable in a financial year, **give notice to such partner in Form No. LLP BEN-4**, seeking information in accordance with sub-section (5) of section 90 of the Companies Act, 2013 as applied to the limited liability partnership as per the notification.

#### (ii) Reporting to Registrar of Companies

Upon receipt of declaration from SBO, the reporting LLP is required **to file a return in Form No. LLP BEN-2** along with prescribed fee with the Registrar of Companies within a period of 30 days from the date of receipt of the declaration.

#### (iii) Register of SBO

- Upon receiving declarations, reporting LLPs must maintain a register of **significant beneficial owners in Form No. LLP BEN-3**.
- The register shall be **open for inspection during business hours**, at such reasonable time of not less than two hours. on every working day as may be decided by limited liability partnership agreement, or by partners of the limited liability partnership on payment of such fee as may be specified by the limited liability partnership but not exceeding fifty rupees for each inspection.

### Obligations on the SBO

- Every individual **who is a SBO in a reporting LLP shall file a declaration in Form No. LLP BEN-1** within 90 days from the date of commencement of these SBO Rules.

- Every individual who subsequently becomes a SBO or where his or her significant beneficial ownership undergoes any change shall file a declaration in Form No. LLP BEN-I to the reporting LLP, within 30 days of acquiring such significant beneficial ownership or any change therein.

### Application to the Tribunal

The reporting limited liability partnership shall apply to the Tribunal:

- (i) where any person fails to give the information required by the notice in Form No. BEN-4, within the time specified therein: or
- (ii) where the information given is not satisfactory, under sub-section (7) of section 90 of Companies Act, 2013 for order directing that the contribution in question be subject to such restrictions as Tribunal deems fit, including-
  - (a) restrictions on the transfer of interest attached to the contribution in question:
  - (b) suspension of the right to receive profits or any other distribution in relation to the contribution in question:
  - (c) suspension of voting rights in relation to the contribution in question:
  - (d) any other restriction on all or any of the rights attached with the contribution in question

### Exclusions from applicability of SBO Rules

SBO Rules are not applicable to the extent the contribution of the reporting LLP is held by –

- the Central Government, State Government or any local authority;
- a reporting LLP; a body corporate; or an entity controlled by the Central Government or by one or more State Government, or partly by the Central Government and partly by one or more State Government;
- investment vehicles registered with and regulated by the Securities and Exchange Board of India, such as mutual funds, alternative investment funds, Real Estate Investment Trusts and Infrastructure Investment Trust;
- investment vehicles regulated by the Reserve Bank of India or the Insurance Regulatory and Development Authority or the Pension Fund Regulatory and Development Authority.

### COMPOUNDING OF OFFENCES

According to Section 39(1) of the LLP Act, notwithstanding anything contained in the Code of Criminal Procedure, 1973, the Regional Director or any other officer not below the rank of Regional Director authorised by the Central Government may compound any offence under this Act which is punishable with fine only, by collecting from a person reasonably suspected of having committed the offence, a sum which may extend to the amount of the maximum fine provided for the offence but shall not be lower than the minimum amount provided for the offence.

Nothing contained in sub-section (1) shall apply to an offence committed by a limited liability partnership or its partner or its designated partner within a period of three years from the date on which similar offence committed by it or him was compounded under this section.

It is hereby clarified that any second or subsequent offence committed after the expiry of the period of three years from the date on which the offence was previously compounded, shall be deemed to be the first offence.

Every application for the compounding of an offence shall be made to the Registrar who shall forward the same, together with his comments thereon, to the Regional Director or any other officer not below the rank of Regional

Director authorised by the Central Government, as the case may be.

Where any offence is compounded under this section, whether before or after the institution of any prosecution, intimation thereof shall be given to the Registrar within a period of seven days from the date on which the offence is so compounded.

Where any offence is compounded before the institution of any prosecution, no prosecution shall be instituted in relation to such offence.

Where the compounding of any offence is made after the institution of any prosecution, such compounding shall be brought by the Registrar in writing, to the notice of the court in which prosecution is pending and on such notice of the compounding of the offence being given, the offender in relation to which the offence is so compounded shall be discharged.

The Regional Director or any other officer not below the rank of Regional Director authorised by the Central Government, while dealing with the proposal for compounding of an offence may, by an order, direct any partner, designated partner or other employee of the limited liability partnership to file or register, or on payment of fee or additional fee as required to be paid under this Act, such return, account or other document within such time as may be specified in the order.

Notwithstanding anything contained in this section, if any partner or designated partner or other employee of the limited liability partnership who fails to comply with any order made by the Regional Director or any other officer not below the rank of Regional Director authorised by the Central Government, the maximum amount of fine for the offence, which was under consideration of Regional Director or such authorised officer for compounding under this section shall be twice the amount provided in the corresponding section in which punishment for such offence is provided.

### **Destruction of old records**

According to section 40 of the Act, the Registrar may destroy any document filed or registered with him in physical form or in electronic form in accordance with such rules as may be prescribed.

#### **LESSON ROUND-UP**

- The concept of LLPs emerged as a hybrid form of business entity that combines the flexibility and benefits of a partnership with the limited liability protection typically associated with a corporation.
- Minimum two partners, no limit on a maximum number of partners. A minimum of two partners should be designated as 'Designated Partners', out of which one should be a resident of India to fulfil day-to-day statutory obligations under LLP Act. However, other partners are not normally liable except in cases of fraud etc.
- According to Section 3 of the LLP Act, 2008, a limited liability partnership is a body corporate formed and incorporated under this Act and is a legal entity separate from that of its partners.
- The mutual rights and duties of the partners of a limited liability partnership, and the mutual rights and duties of a limited liability partnership and its partners, shall be governed by the limited liability partnership agreement between the partners, or between the limited liability partnership and its partners.
- Contribution of a partner may consist of tangible, movable or immovable or intangible property or other benefit to the limited liability partnership, including money, promissory notes, other agreements to contribute cash or property, and contracts for services performed or to be performed.

- Section 34 (2) states that every limited liability partnership shall, within a period of six months from the end of each financial year, prepare a Statement of Account and Solvency for the said financial year as at the last day of the said financial year in such form as may be prescribed, and such statement shall be signed by the designated partners of the limited liability partnership.
- Section 35(1) of the LLP Act provides that every limited liability partnership shall file an annual return duly authenticated with the Registrar within sixty days of closure of its financial year in such form and manner and accompanied by such fee as may be prescribed.
- The Regional Director or any other officer not below the rank of Regional Director authorised by the Central Government may compound any offence under this Act which is punishable with fine only, by collecting from a person reasonably suspected of having committed the offence, a sum which may extend to the amount of the maximum fine provided for the offence but shall not be lower than the minimum amount provided for the offence.

### TEST YOURSELF

*(These are meant for re-capitulation only. Answers to these questions are not to be submitted for evaluation)*

1. What are the steps involved in the formation and registration of LLP?
2. What is an LLP Agreement? State the procedure for altering the LLP Agreement.
3. A Limited Liability Partnership wants to change its name. Explain under what factors have to be borne in mind and the procedure for the same.
4. LLP Agreement is the essence of LLP formation. Examine the statement in light of all the essential clauses of the LLP Agreement.
5. ABC LLP wants to shift its registered office from Delhi to Maharashtra. Suggest the partners the procedure for the change in the registered office of the company.
6. The Financial Statements of Limited Liability partnership are nor mandatorily required to be audited by a Chartered Accountant. Comment.

### LIST OF FURTHER READINGS

- Bare Act- The LLP Act, 2008
- The LLP Rules, 2009

### OTHER REFERENCES (Including Websites/ Video Links)

- <https://www.mca.gov.in/content/mca/global/en/acts-rules/ebooks/acts.html?act=NTk2MQ==>

