

# The Limited Liability Partnership Act, 2008



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## \* Need of New Form of Limited Liability Partnership:



LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of Partnership:

> **Limited liability** — Every partner of a LLP is the agent of the LLP, but not of other partners. The liability of the partners will be limited to their agreed contribution in the LLP, while the LLP itself will be liable for the full extent of its assets.

> **Flexibility of a partnership** — The LLP allow its members the flexibility of organizing their internal structure as a partnership based on a mutually arrived agreement. Owing to flexibility in its structure and operation, the LLP is a suitable vehicle for small enterprises and for investment by venture capital.

## \* Definitions

1. Body corporate — Defines

<u>Includes:</u>	<u>Excludes:</u>
<input type="checkbox"/> Indian company	<input type="checkbox"/> Co-operation sole
<input type="checkbox"/> Foreign company	<input type="checkbox"/> Co-operative society
<input type="checkbox"/> Indian LLP	<input type="checkbox"/>
<input type="checkbox"/> Foreign LLP	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>

Note: HUF not covered under this definition. Thus, HUF cannot be the partner in LLP.

2. Financial Year — financial Year means the period from the 1st day of April of a year to the 31st day of March.



• However, in the case of a LLP 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.

3. Small LLP — means a Limited Liability Partnership



### \* Characteristics of LLP



1. Body Corporate — LLP is a body corporate formed and incorporated under this Act.

2. Perpetual Succession — It has continuous existence irrespective of death, insanity or insolvency of partners.

3. Separate legal Entity — It is a separate legal entity from that of its partners.

4. Mutual Agency — All the partners will be the agents of LLP alone. No partner can bind the other partner by his acts.

5. LLP Agreement — Mutual rights and duties of the partners within a LLP is governed by an agreement between the partners.

6. **Common Seal** - It is **not mandatory** for a LLP to have a common seal. It can be affixed by at least 2 designated partners of the LLP.



7. **Limited liability** - The liability of the partners will be limited to their agreed contribution in LLP.

8. **Minimum and Maximum no of Partners** - Every LLP shall have **at least 2 partners** and also shall have at least 2 designated partners, of whom at least one shall be resident in India. There is **no maximum limit on LLP**.

9. **Business for profits only** - LLP is carried with a view to **earn profits**.

## \* Advantages of LLP

1. Operates **on the basis of agreement**.
2. **Provides flexibility** without imposing legal and procedural requirements.
3. **Easy to form**
4. **All partners enjoy limited liability**.
5. **Easy to dissolve**.

Limited Liability Partnership



\* Partners [Sec 5]

Its definition includes



\* Minimum number of Partners [Sec 6]

- (i) Every LLP has at least 2 partners.
- (ii) If any time the number of Partners of LLP is reduced below two numbers and is continued for more than 6 months then the partners shall be liable personally for the obligations of the LLP incurred during that period.



## \* Designated Partners [Sec 7]

1. Every LLP shall have at least two designated partners who are individuals and at least one of them shall be a resident in India.

Provided that, all the partners are body corporate or in which one or more partners are individual and body corporate, at least two individuals shall act as designated partner.

2. A partner may become or ceases to become a designated partner in accordance with LLP Agreement.

3. An individual shall not become a designated partner unless a prior consent is obtained.

4. Every LLP shall file with the Registrar the particulars of every individual within 30 days of his appointment.

5. Every designated partner shall obtain a Designated Partner Identification Number (DPIN)



## \* Liability of Designated Partners [Sec 8]

- (a) responsible for the doing of all acts, compliance of the provisions of this Act
- (b) liable to all Penalties for the contravention of these provisions.

## \* Changes in Designated Partners [Sec 9]

A LLP may appoint a designated partner within 30 days of vacancy, if at any time there is only one designated partner, each shall be deemed to be designated partner.

## \* Incorporation of LLP [Sec 11]

(1) For a LLP to be incorporated:

- (a) two or more persons associated for carrying on a lawful business to earn profits.

(b) The incorporation document shall be filed with the Registrar of State in which the Registered office of the LLP is to be situated.



(c) Declaration shall be made by:

- Either by an advocate, or a Company Secretary or a Chartered Accountant or a Cost Accountant.

- By any one of the subscribers.

(2) The incorporation document shall:

- be in a form prescribed
- state the name of the LLP.
- state the address of the registered office of the LLP.
- state the name and address of each partners of the LLP.
- state the name and address of the designated partners.

### \* Incorporation by Registration [Sec 12]

1. The registrar shall within a period of 14 days,
  - (a) register the incorporation document
  - (b) give a certificate that the LLP is incorporated by the name specified therein.
2. The certificate issued shall be signed by Registrar and authenticated by his common seal.
3. The certificate shall be conclusive evidence.

### \* Registered office of LLP and change therein [Sec 13]

1. Every LLP shall have registered office to which all communications and notices shall be received.



2. A document may be served by sending it by post or by registered post at the registered office.

3. A LLP may change the place of its registered office and file the notice with the Registrar.

### \* Effect of Registration [Sec 14]



On Registration, LLP shall -

(i) sue or being sued

(ii) Acquired, own or dispose of property

(iii) Have common seal.

(iv) Does any act which the body corporate may lawfully do.

### \* Name [Sec 15]

• No LLP shall be registered by a name, which

(a) undesirable

(b) Identical to any other LLP, company or a registered trade mark.



→ LLP need not change its name if it resembles with the partnership firm.

### \* Reservation of Name [Sec 16]

1. A person may apply to the Registrar for reservation of:

(a) name of proposed LLP

(b) name to which a LLP proposes to change its name.

2. The name of LLP shall be reserved for a period of 3 months from the date of intimation by Registrar. ❤️

### \* Rectification of Name of LLP [Sec 17]



If in case, Registration of name of LLP is identical to  
(a) any other LLP or company, or  
(b) registered trade mark

Then, the central Govt may direct such LLP to change its name within a period of 3 months.

→ The application of the proprietor of the registered trade mark shall be maintainable within a period of 3 yrs from the date of incorporation of name of LLP.

→ After the change in its name of LLP, within a period of 15 days LLP shall give notice to Registrar along with CG.

→ Registrar within a period of 30 days will grant certificate of incorporation. Then, LLP shall change its name in the LLP Agreement.

→ If LLP makes any default in complying, the central Govt shall allot new name to LLP and issue a fresh certificate of incorporation.

## STEPS TO INCORPORATE LLP :

### Step 1

**Reservation of name of LLP:** Applicant has to file e-Form RUNLLP, for ascertaining availability and reservation of the name of a LLP.

### Step 2

**File e- Form FiLLiP for incorporating a new LLP:** contains the details of proposed LLP, details of partners/designated partners and their consent.

### Step 3

Execution of **LLP Agreement** is mandatory as per Section 23 of Act. It will be filed in **e-Form 3** within 30 days of incorporation of LLP.

## \* Relationship of Partners [Sec 23]

- Mutual rights and duties of the partners shall be governed by the LLP agreement between the partners.
- Any changes made in the LLP Agreement shall be filed with registrar.
- An agreement in writing made before the incorporation of LLP. Such agreement is ratified by all the partners after the incorporation of LLP.
- In absence of agreement, the mutual right and duties are to be followed as set out in the first Schedule.



## \* Cessation of Partnership firm [Sec 24]

1. A partner may cease to be partner of LLP by giving notice in writing of not less than 30 days.

2. A person shall cease to be a partner of LLP :



(a) on his death or dissolution of LLP

(b) declared to be of unsound mind.

(c) declared insolvent.

3. Former partner is regarded still being partner of LLP unless :

(a) Notice that former partner has ceased to be partner of LLP has been delivered to Registrar.

4. In case of death or Insolvency of former partner, shall be entitled to receive ;

(a) amt equal to capital contribution.

(b) accumulated shares of profits or losses.

5. Such former partner shall not have any right to interfere in management.

### \* Registration of changes in Partners



1. Every partner shall inform LLP of any changes in his name or address within a period of 15 days of such change.

2. LLP shall file notice with the Registrar within 30 days for the change in the name and address of LLP.

In case of incoming/outgoing partner, it shall also give written consent.

## \* Unlimited liability in case of fraud [Sec 30]

UNLIMITED  
LIABILITY



Investopedia

1. In case of fraud :

- In the event of an act carried out by a LLP, or any of its partners.
- Intend to defraud creditors or any other person.
- Liability of LLP and partners who acted with intent to defraud creditors for any fraudulent purpose.
- shall be unlimited for all or any of the debts.

2. Where any business is carried with such intent, then shall be punishable with

- imprisonment may not extend to five years and
- fine shall not be less than 50,000, may extend to 5Lks.

3. Employee shall be liable to pay compensation to any person who has suffered any loss or damage by reason of such conduct.

However, such LLP shall not be liable if any partner or employee has acted fraudulently without the knowledge of LLP.

## \* Whistle Blowing [Sec 31]

1. The court or tribunal may reduce or waive any penalty against any partner or employee of LLP, if it is satisfied that :



• Such partner or LLP has provided useful information during investigation of such LLP.

2. No partner or employee may be discharged, suspended, threatened or harassed because of providing information.

### \* Financial Disclosures [Sec 34]



1. Maintain proper books of account in prescribed manner.



2. File Statement of Account and Solvency within 6 months from end of each F.Y. (e-form 8)



3. Statement of Account and Solvency shall be filed with the Registrar every year in prescribed form and manner and with prescribed fees.



4. Audit of Accounts. Central Government may exempt.

#### 1. Proper Book of Accounts :

- (a) Maintain on cash or accrual basis
- (b) according to Double Entry System
- (c) maintained at its registered office.

#### 2. Statement of Account and Solvency :

- (a) file within 6 months from the end of each FY.
- (b) Shall be signed by the designated partners of the LLP.

3. Account of LLP shall be audited as may be prescribed.  
CG may exempt certain LLP from audit.

## \* Accounting And Auditing Standards [Sec 34A]

CG in consultation with NFRA to prescribe Accounting and Auditing Standards.

## \* Annual Return [Sec 35]

Annual Return

Every LLP shall file an annual Return with ROC within 60 days of closure of FY.

## \* Inspection of Documents [Sec 36]

Incorporation Document

Name of partner and changes

SAS

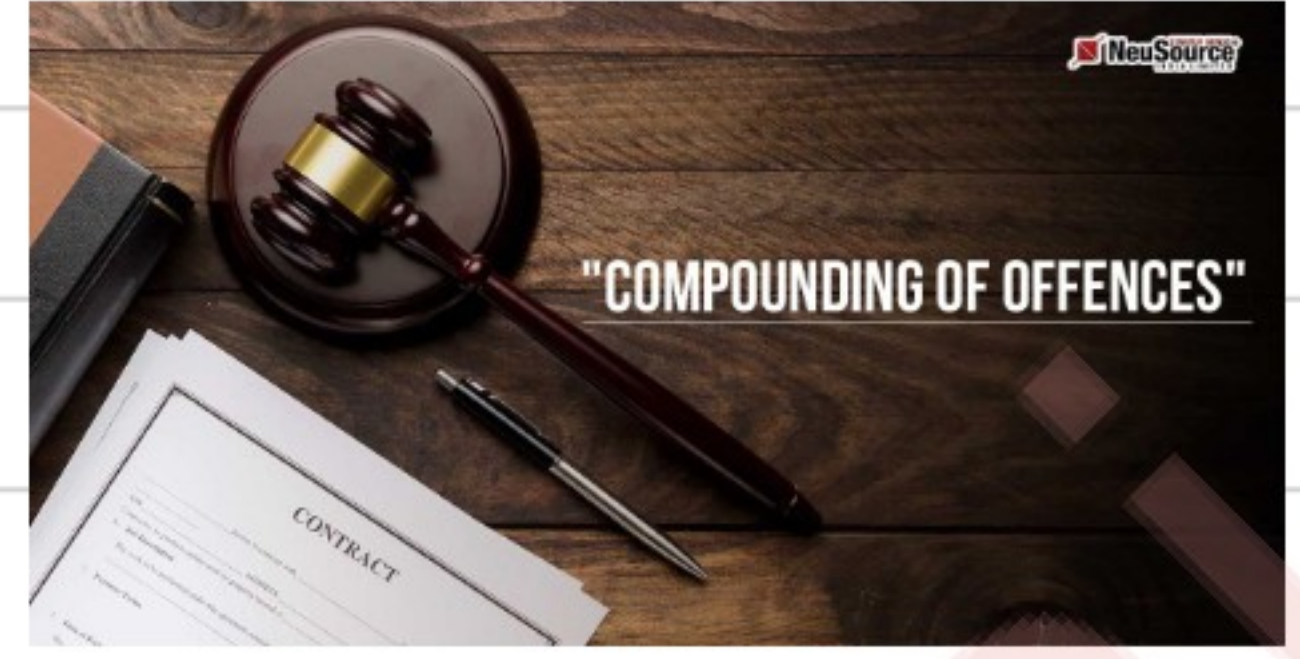
Annual Return

All such documents shall be available to any person as prescribed.

## \* Compounding of offences [Sec 39]

1. RD may compound any offence which is punishable with fine only by collecting a sum which may extend to max. fine but not less than min. fine for such offence.

2. Compounding shall not apply to offense committed within 3 years from the date on which similar offense was compounded.



Note: Second or subsequent offense after 3 years

### 3. Procedures for Compounding

- Application to be made to ROC who shall forward it, together with his comments to RO.
- Where any offense is compounded intimate ROC within 7 days.

### 4. Consequences of Compounding

- Where compounded before institution of prosecution - No prosecution shall be instituted.
- Where compounding is made after institution of prosecution - ROC to intimate such compounding to court where prosecution is pending and thereafter offender shall be discharged.

5. While dealing with compounding, RO may direct OP, partners or employees to file such return or document.

### \* Partners Transferable Interest [Sec 42]

1. Rights of Partners to:

- share of profit and losses
- receive distributions as per LLP agreement.

2. Transfer of such rights doesnot by itself:

(a) cause disassociation of partner or dissolution or winding up of LLP.

(b) entitle transferee to participate in management or access information

### \* Registration And Effect of conversion [Sec 58]

1. The Registrar on satisfying that firm, private co or unlisted public co has complied with schedules.

- ROC shall register documents and issue certificate of registration.

- LLP shall be effectively Incorporated from the date mentioned in certificate.

2. LLP shall, within 15 days, inform ROC about such conversion.

### \* Compromise And Arrangement of LLP [Sec 60]

1. Where a compromise is proposed between:

LLP and its  
creditors

LLP and its  
Partners

The tribunal may order meeting of creditors/partners to be called, held, & conducted as prescribed.



2. If majority representing 3/4th in value of partners/creditors agree to any compromise then

- It shall be sanctioned by Tribunal.
- shall be binding on all creditors/partners.

3. No order sanctioning any compromise shall be made by Tribunal unless it has satisfied LLP has disclosed

- All material facts including financial position

4. Tribunal's order shall be filed by LLP with ROC within 30 days from such order.

### \* Power of Tribunal to enforce Compromise and Arrangement [Sec 61] (C/A)

(1) The Tribunal:

- shall have power to supervise the carrying out of compromise
- Give directions or make modification for the proper working of compromise.

(2) If the tribunal sanctioned compromise but cannot be worked satisfactorily, then it may,

- either on its own motion
- make an order for winding up of LLP.



## \* Provisions for facilitating Reconstruction or Amalgamation of LLP [Sec 62]

Technical

1. CIA has been proposed for a scheme for reconstruction or amalgamation of 2 or more LLP.

→ Under the scheme, whole or any part of undertaking, property or liability is transferred to another LLP, Tribunal may order sanctions for:

(i) Transfer to the transferee of LLP to whole or part of undertaking, assets, liability of any transferor LLP.



(ii) Continuation of legal proceeding pending by / against any transferor LLP.

(iii) Dissolution, without winding up of transferor LLP.

(iv) Provisions for persons dissenting from CIA.

No such CIA proposed amalgamation shall be sanctioned by Tribunal unless the Tribunal has received a report from ROC and official liquidator that affairs of LLP have not been conducted in a manner prejudicial to the interests of public interest.

2. Where an order provides for Transfer of any property, or liability, shall be freed from any charge.

3. file certified copy of NCLT order with ROC - 90 days

## \* Winding Up And Dissolution [Sec 63]

The winding up of LLP may either be voluntary or by Tribunal and LLP, so wound up may be dissolved.

## \* Circumstances in which LLP wound by Tribunal [Sec 64]

- LLP decides that LLP would be wound up by Tribunal.
- for > 6 months no. of partners reduced below two.
- LLP has acted against the integrity and sovereignty of India.
- LLP has made default in filing with ROC, the SAs and AR for 5 consecutive A.
- Tribunal is of the opinion that it is just and equitable that LLP would be wound up.

## \* Application of Provisions of Companies Act [Sec 67]

1. Central Govt may direct provisions of Companies Act shall apply to LLP with exception, Modification and adaptation as may be prescribed.

2. A copy of every notification proposed -  
Lay before Parliament and get it approved.

THE END .....