

LIMITED LIABILITY PARTNERSHIP (LLP)



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INTRODUCTION



- Governed by LLP Act 2008, The Act came into force for most of its part on 31/03/2009, followed by its rules on 01/04/2009 and the registration of first LLP on 02/04/2009
- It came as a result of the recommendations made by several expert committees like Bhatt Committee of 1972, Naik Committee of 1992, Abid Hussain Committee of 1997, Gupta Committee of 2001, Naresh Chandra Committee of 2003 and the JJ Irani Committee of 2005.

FEATURES



- Corporate vehicle with a flexibility of a partnership
- More suitable for service industry, and small and mid-size enterprises
- Separate legal entity
- Perpetual succession
- The mutual rights and duties of partners of an LLP is governed by the agreement and if the agreement is silent, it shall be governed by the provisions of the proposed legislation

FEATURES



- Limited liability, No partner would be liable on account of the independent or unauthorized acts of other partners or their misconduct;
- Every LLP shall have at least two partners and shall also have at least two individuals as Designated Partners, of whom at least one shall be resident in India.
- Audit becomes mandatory for those companies whose contribution exceeds 25 lakhs or annual turnover exceeds 40 lakhs. A statement of accounts and solvency shall be filed by every LLP with the Registrar every year
- The Central Government has power to investigate the affairs of an LLP, if required, by appointment of competent inspector for the purpose;
- A partnership firm, a private company and an unlisted public company may convert themselves to LLP in accordance with provisions of the proposed legislation

DISTINCTION BETWEEN LLP AND PARTNERSHIP



- LLP is a separate legal entity, it can sue and can be sued
- Limited Liability
- Perpetual succession
- Registration becomes compulsory when it comes to LLP
- Maximum limit on members is not specified

DISTINCTION BETWEEN LLP AND COMPANY



-]Registration is much more easy when it comes to an LLP
- LLP agreement is like the MOA & AOA
- Change in name/registered office address is simple in LLP
- No mandatory time period for meetings
- Mostly ownership and management be in the hands of the same person when it comes to an LLP
- In case of a company, no individual director can conduct the business of the company but in an LLP, each partner has the authority to do so unless expressly prohibited by the partnership terms.

DISTINCTION BETWEEN LLP AND COMPANY



- Remuneration to Directors is regulated in companies
- No restriction on borrowing powers
- The LLP can choose to maintain the accounts on cash basis/accrual basis whereas under the Companies Act, accrual method is compulsory.
- Audit becomes compulsory for companies from day one
- Cost audit is not mandatory for an LLP
- CS appointment is not mandatory, However, the annual return of a LLP in Form 11 is to be certified as 'true and correct' by a Company Secretary in practice.

INCORPORATION OF LIMITED LIABILITY PARTNERSHIP



- To be discussed using the e-form FiLLiP
- Any person who makes a false statement during the registration process shall be punishable with imprisonment for a term which may extend to two years and with fine which shall not be less than ten thousand rupees but which may extend to five lakh rupees.
- Subject to prior compliance with the requirements of section 11(1) of the Act, section 12(1) mandates the Registrar to register the incorporation document and issue a certificate of incorporation within 14 days.

Registered Office of LLP



Notice of change of registered office to be filed with the Registrar within 30 days from the date of the change in LLP -Form 15 prescribed under Rule 17 of the LLP Rules 2009 along with the prescribed fees.

List of documents required to attached with LLP Form 15:

- a) Consent letter of all DP's
- b) Consent letter of all Secured Creditors
- c) Copy of Board Resolution
- d) Copy of Advertisement – Daily newspaper published in English and in the principle language of the District where the registered office is situated (only if from one state to another)
- e) Proof of New Registered Office Address (If Rented then Rent Agreement, Utility Bill in the name of Owner & NOC)

Name of LLP



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. Naming guidelines are similar to Companies
3. Name can be reserved through RUN-LLP, one resubmission for 15 days is allowed, to be filed with the following enclosures
 - a) Certified copy of consent of all partners involved for the name change;
 - b) Copy of the existing LLP agreement;
 - c) Trademark copy or a copy of the registration certificate;

Once the name is approved, form LLP-5 has to be filed within 30 days.

After the partners get the new certificate of registration, a supplementary agreement needs to be laid out

LLP AGREEMENT



- 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. – Section 23
- To be filed with the registrar within 30 days from incorporation in form 3

ALTERATION TO THE LLP AGREEMENT



To be filed within 30 days from the date of amendment in form 3 along with the following documents

- a) Initial LLP Agreement
- b) Supplementary/ Altered agreement
- c) Optional attachments if any

PARTNERS AND DESIGNATED PARTNERS



- Any person can be a 'partner'
- Every LLP shall have at least two designated partners who are individuals and at least one of them shall be a resident in India.
- in case of a limited liability partnership in which all the partners are body corporates, at least two partners shall nominate their respective individuals who are to act as "designated partners" and one of the nominees shall be a resident of India. Vide Circular No. 2/2016 dated 15th January 2016,

Who cannot become a Partner?



- He has been found to be of unsound mind by a Court of competent jurisdiction and the finding is in force;
- he is an undischarged insolvent; or
- he has applied to be adjudicated as an insolvent and his application is pending.
- HUF or its Karta cannot become partner or designated partner in LLP

Disqualification of a designated partner



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

Liabilities of Designated partners



The designated partner would be liable to all penalties imposed on the LLP for the contravention of the provisions of the Act and as such the designated partner would be required to pay all the monetary fines imposed on the LLP. There is no provision in the Act providing for the reimbursement of such monetary penalties to him by the LLP.

Obligation of the Partners



- All partners, are agents of the LLP, but not of other partners.
- LLP shall not be liable for the omissions/mistakes of its partners if that partner is not properly authorized to carry on that activity
- Liabilities of the LLP shall be met only with the properties of the LLP

LLP FOR THE PROFESSIONALS



- To insulate them from third party claims against professional negligence or deficiency
- Cross section of the professionals may come together under a banner
- Solution under one roof for clients
- Helps to grow in heavy competition

VALUATION OF CAPITAL CONTRIBUTION



If other than cash is given as contribution, it shall be valued by a practicing Chartered Accountant or by a practicing Cost Accountant or by approved valuer from the panel maintained by the Central Government.

INVESTIGATION OF THE AFFAIRS OF LIMITED LIABILITY PARTNERSHIP (SECTION 43)



As per Section 43, the Central Government may appoint one or more competent persons as inspectors to investigate

- if not less than one-fifth of the total number of partners of the limited liability partnership make an application along with supporting evidence and security amount as may be prescribed; or
- if the limited liability partnership makes an application that the affairs of the limited liability partnership ought to be investigated; or

INVESTIGATION OF THE AFFAIRS OF LIMITED LIABILITY PARTNERSHIP (SECTION 43)



- if, in the opinion of the Central Government, there are circumstances suggesting—
 - a) that the business of the limited liability partnership is being or has been conducted with an intent to defraud its creditors, partners or any other person, or otherwise for a fraudulent or unlawful purpose, or in a manner oppressive or unfairly prejudicial to some or any of its partners, or that the limited liability partnership was formed for any fraudulent or unlawful purpose; or
 - b) that the affairs of the limited liability partnership are not being conducted in accordance with the provisions of this Act; or
 - c) that, on receipt of a report of the Registrar or any other investigating or regulatory agency, there are sufficient reasons that the affairs of the limited liability partnership ought to be investigated.

FOREIGN LIMITED LIABILITY PARTNERSHIP



- Should file within 30 days of establishing a place of business in India to the respective Registrar in Form 27 – Form 27 to be discussed using the e-form
- FDI in LLP

ANNUAL COMPLIANCES OF LLP



- Annual returns are filed in Form 11 - within 60 days of the closure of the Financial year (i.e. 30th May every year). In case the annual turnover of the LLP crosses Rs 5 crores or the Capital contribution from Partners exceeds more than Rs 50 Lakhs the Annual return should be accompanied by a Certificate from Practising Company Secretary.
- Statement of Solvency in Form 8 – before 30th of October every year – Penalty Rs.100 per day

CONVERSION OF COMPANY INTO LLP



- Any existing private company or existing unlisted public company can be converted into LLP by complying with the Provisions of clause 58 and Schedule III and IV of the LLP Act.
- Form 18 needs to be filed with the registrar along with Form 2 for such conversion after getting the name approved
- Once approved file form 3

CONVERSION OF COMPANY INTO LLP



Form 18 to have the following attachments

- Statement of shareholders.
- Incorporation Documents & Subscribers Statements in Form 2 filed electronically.
- Statement of Assets and Liabilities of the company duly certified as true and correct by the auditor.
- List of all the Secured creditors along with their consent to the conversion.
- Approval of the governing council (In case of professional private limited companies)
- NOC from Income Tax authorities and Copy of acknowledgement of latest income tax return.
- Approval from any other body/authority as may be required.
- Particulars of pending proceedings from any court/Tribunal etc.

CONVERSION OF LLP INTO COMPANY



- An LLP can be converted into a Pvt. Ltd. company as per the provisions contained in Section 366 of the Companies Act, 2013,
- Prerequisites for conversion
- an LLP must have at least 7 partners (however as per Companies Amendment Act, 2017 LLP with 2 partners can be convert into Company),
- approval from all the partners is required,
- advertisement in newspaper is to be done in a local and a national newspaper,
- Apply for name and file form URC-1

STRIKE OFF



- In case of an existing LLP which is not carrying on any business or operation for a period of one year or more make an application in form 24 on voluntary basis
- STRIKE OFF BY ROC SUO MOTU: - Same as it is applicable to a company – 2 Continuous years

RESTORATION OF THE LLP



Application to be made to NCLT in form NCLT -9 by any one of the following persons

1. LLP
2. Partner or
3. Creditor

Copy of the application to be sent to the concern ROC get their opinion also

WINDING UP BY TRIBUNAL



A limited liability partnership may be wound up by the Tribunal—

- if the limited liability partnership decides that limited liability partnership be wound up by the Tribunal;
- if, for a period of more than six months, the number of partners of the limited liability partnership is reduced below two;
- if the limited liability partnership is unable to pay its debts;

WINDING UP BY TRIBUNAL



- if the limited liability partnership has acted against the interests of the sovereignty and integrity of India, the security of the State or public order;
- if the limited liability partnership has made a default in filing with the Registrar the Statement of Account and Solvency or annual return for any five consecutive financial years; or
- if the Tribunal is of the opinion that it is just and equitable that the limited liability partnership be wound up.



THANK YOU

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