

Limited Liability Partnership Act, 2008

1. SALIENT FEATURES OF LLP

➤ EFFECTIVE DATE

The Limited Liability Partnership Act, 2008 is effective from 1st April, 2008.

➤ LIMITED LIABILITY

The liabilities of the partners is limited to the extent of their capital contribution. Unlike partnership under Indian Partnership Act, 1932, personal properties of the partners shall not be at stake. There is no concept of joint and several liabilities of the partners. The partners are agent of the firm and not of the other partners. The concept of limited liability shall not hold good for all the partners who are involved in fraud and misrepresentation.

➤ SIMPLICITY

There are minimum compliances to be complied with under LLP Act. SME finds it difficult to manage all compliance of Companies Act, 1956 with regard to Share Certificate, Minutes, Board Meeting, AGM, restriction of loans taken and given etc. LLP is simpler form of organization for SME to reap the benefit of limited liability.

➤ NUMBER OF PARTNERS

The LLP can have minimum 2(two) partner and there is no limit regarding maximum number of partners.

➤ SEPARATE ENTITY AND PERPETUAL SUCCESSION

LLP is a separate entity and it can own properties in its own name. A LLP is a juristic person and its existence does not depend on the partners. The partners of a LLP may keep changing from time to time, but it will not affect the LLP's continuity. However when all the partners die and there are no provisions of nominating legal heirs for admission to the partnership in the event of death, then Tribunal shall wind up the LLP on its own.

➤ CAPACITY TO SUE AND BE SUED

As LLP is a body corporate and it can sue and be sued in its own name.

➤ AGREEMENT:

Right and duties of partners in LLP and scope of work will be governed by agreement between partners and the partners have the flexibility to change the agreement from time to time after following due procedure laid down in the act. In case no agreement is entered into, the provisions of the First schedule to the LLP Act will become applicable.

➤ RELATED PARTY TRANSACTION:

Unlike Companies Act 1956, there is no restriction of related party / arms lengths transactions. Partners may lend money to and transact other business with the LLP and has the same rights and obligations with respect to the loan or other transactions as a person who is not a partner.

➤ TAX :

Profit will be taxed only in hands of LLP and not to partners thus there is no concept of Dividend Distribution Tax. Thus it helps avoiding double taxation.

➤ CAPITAL CONTRIBUTION:

There is a requirement for a minimum capital contribution from the partners, which then shall be available for the creditors of the LLP or for a guarantee from the partners for the obligations of the LLP.

➤ TRANSFERABILITY OF RIGHT:

The rights of a partner to a share of the profits and losses of the LLP and to receive distributions in accordance with the LLP agreement are transferable either wholly or in part.

2. PARTNERS

a) The following persons can be partners in a LLP:

- Individuals
- Limited Liability Partnerships
- Indian Companies

- Foreign Limited Liability Partnerships
- Foreign Companies

The following entities are not permitted to be the partners of an LLP.

➤ **HINDU UNDIVIDED FAMILY**

HUF cannot be partner in LLP. Section 5 clearly spells out that only Individual and Body Corporate can become the partner of LLP.

➤ **CO-OPERATIVE SOCIETY**

A Co-operative Society cannot be member of a LLP.

➤ **MINOR**

Minor can not be partner in LLP. There are no provisions of admitting minors to the benefits of partnership unlike Sec. 30 of Indian Partnership Act, 1932.

➤ **FIRMS UNDER INDIAN PARTNERSHIP ACT, 1932**

Firms registered under Indian Partnership Act, 1932 cannot be partner in LLP.

b) **DESIGNATED PARTNERS**

The LLP shall have at least two partners as Designated Partners (DP) (atleast one designated partner shall be a person resident in India) and they will be responsible for all the act, matter, things to be done by LLP viz filing returns, documents, etc., with the Registrar etc., and such act as may be provided in LLP Agreement.

3. CONVERSION

Existing Partnership firms whether registered or not under Indian Partnership Act, 1932 and unlisted companies can be converted into LLP in accordance with the provisions of the Second, Third and Fourth Schedules appended to the Act.

4. DISADVANTAGES

- LLP has to follow certain procedure as filing of Annual Returns, Solvency statements and accounts, etc. which might be difficult for family run enterprises.
- The incorporation document, changes in the partners, statement of accounts and Annual Return are public documents and available for inspection by any person. The secrecy to the financial data cannot be maintained.
- No remedies available for oppression and mismanagement
- No systems prescribed for management and designated partners can manage as per their wish.
- More responsibility for compliances on designated partners who are liable for penalties also. There should be at least two designated partners and One of the designated partners should be resident in India.
- More cost of compliance as very few professionals handle this work.
- Dissolution provisions almost similar to companies
- New concept and LLPs may face difficulty in ensuring compliances as limited expertise available with no precedents.

5. COMPARATIVE ANALYSIS

Let's understand the unique features of LLP by means of comparison with firm and companies.

Comparison

Matter	LLP	Company	Firm
Liability of Beneficiary	Limited	Limited	Unlimited Joint & Several
No. of Beneficiary	No Limit	Pvt.- 50; Pub.- No limit	Max. – 20
Acceptance of Deposit /Loan	Free to accept	Restricted	Free to accept
Restriction on sister concern & Related party Transaction	No Restriction	Restriction	No Restriction
Winding Up / Dissolution	Some what Difficult	Difficult	Very Easy
Right of Management	Through DP	Through Director	All Partner
Specialized Management	Yes	Yes	Difficult to achieve
Perpetual Succession	Yes	Yes	No

Statutory Audit	In Limited Cases	Required	Not Required
Regulatory Frame work	Moderate	Hard	Very less
Name Approval	Compulsory	Compulsory	Not Required
Voting Right	Definable	Capital Contribution	Equal
Majority Ruling	Possible	Possible	Not Possible
Accounting period	Financial year	Any year	Financial year
Registration	Compulsory	Compulsory	Optional
Meeting	No Provisions	Board Meeting and General Meeting required	No Provisions
Statutory records	Books of accounts	Books of Accounts, Statutory registers, Minutes etc.	Books of accounts
Applicability of accounting standard	Not yet	Applicable	NA
Oppression and Mismanagement	No provisions for redressal	Provisions exist	No provisions for redressal

6. LIMITED LIABILITY PARTNERSHIP AGREEMENT

➤ SIGNIFICANCE

Limited Liability Partnership Agreement will determine the rights and duties of the partners and their rights and duties in relation to the LLP. The Partners can enter into this agreement upon registration of LLP. It should be in writing. If the agreement has been executed before incorporation, then the partners have to ratify the Agreement upon incorporation.

➤ FIRST SCHEDULE

If LLP Agreement is silent on any of the matter then provision of the First Schedule appended to Act shall apply in relation to that matter. Further as mentioned earlier, in the absence of the agreement, the provisions of the First Schedule will apply.

➤ DRAFTING OF AN AGREEMENT

The nature and duration of business, relationship between partners, opening and operation of bank accounts, management, partners duties and responsibilities, arbitration, amendment to the agreement, mode of distribution of profit, etc.; are some of the aspects that have to be taken into consideration while drafting the agreement in order to enable the orderly function of the LLP and to avoid misunderstanding among the partners.

➤ RATIFICATION OF THE AGREEMENT

Upon registration of LLP, the partners have to enter into a partnership agreement in writing. However it is possible to enter into a LLP agreement before the incorporation of the LLP. In such case the partners have to ratify this agreement after incorporation of the LLP and have to file the agreement with ratification.

➤ AMENDMENT TO THE AGREEMENT

Any change in particulars mentioned in LLP Agreement needs to be communicated *vide* Form 3 within 30 days of making such changes. Changes to LLP Agreement can be effected (other than change in constitution) by means of supplementary agreement provided LLP Agreement so provides for making changes through supplementary agreement.

➤ FILING OF AGREEMENT

LLP agreement and changes to it have to be filed with the Registrar in Form 3 within 30 days from the date of incorporation or ratification by all the partners where the agreement is entered into before incorporation, as the case may be or the date of such change.

➤ FEES PAYABLE WITH FORM 3

Form 3 has to be filed with fees given in Annexure A.

➤ EFFECT OF AGREEMENT IS SILENT

If the LLP agreement is silent on any of the matters contained in the First Schedule, then the relevant provisions of the First Schedule shall apply.

➤ **STAMP DUTY ON AGREEMENT**

The Stamp duty applicable to Instrument of Partnership shall apply to LLP Agreement.

7. INCORPORATION OF LLP AND STARTING THE BUSINESS

➤ **NAME**

The name of the LLP shall not be the one prohibited under the Emblems and Names (prevention of improper use) Act, 1950. Further there are a number of other restrictions like being identical or resembling with the already existing name of an LLP or a company, name containing a trade mark without authorisation, name offensive in nature etc. The application for reservation of name should be filed in form 1.

➤ **INCORPORATION**

To incorporate an LLP, the incorporation document shall be filed with the Registrar having jurisdiction over the registered office of the LLP. The incorporation document has to be in Form 2.

➤ **FEES PAYABLE**

The fee payable for incorporation of LLP is given in Annexure A.

➤ **INCREASE IN CONTRIBUTION**

Whenever there is an increase in contribution, the difference between the fees payable on the increased slab of contribution and the fees paid on the preceding slab of contribution shall be paid through Form 3.

➤ **ISSUE OF CERTIFICATE OF REGISTRATION**

The Registrar shall issue a certificate of registration under his seal.

➤ **CHANGES IN NAME AND ADDRESS OF THE PARTNER**

Every partner shall inform the LLP of any change in his name and address within a period of 15 days of such change.

The LLP shall file Form 4 with the Registrar within 30 days from the date of such change.

➤ **CONTRIBUTION**

Partners can contribute by way of tangible, movable or immovable or intangible property or other benefit including money, promissory notes, etc. Contribution can be by way of services performed or to be performed.

The monetary value of contribution of each partner shall be accounted for and disclosed in the accounts.

The obligation to contribute shall be as per LLP agreement.

There is also a provision regarding the valuation of the contribution of a partner consisting of tangible, movable or immovable or intangible property or other benefits.

➤ **MODE OF SERVING DOCUMENTS**

Documents can be served on the LLP, Designated Partners and Partners through Electronic Transmission or Courier etc.

➤ **ADDRESS FOR SERVING DOCUMENTS**

The LLP may in addition to the registered office address, declare any other address as its address for service of documents. This place also should come within the jurisdiction of the Registrar. To declare the additional place, it should follow the LLP agreement. If the agreement is silent, then consent of all partners shall be required.

The intimation of other address for service documents shall be given in Form 12 within 30 days of obtaining the consent of all partners.

The fee payable is given in Annexure A.

➤ **STARTING THE BUSINESS**

After the LLP has been incorporated, it can start the business. LLP Agreement may contain provisions with regard to manner in which a meeting may be called. In the absence of such express provision in LLP Agreement, each and every discussion need to be minuted. It is advisable to segregate Special and ordinary business and draft the LLP agreement with regard to manner of taking decision on such matter to avoid lengthy and time consuming procedures.

8. DESIGNATED PARTNERS

➤ **NUMBER OF DESIGNATED PARTNERS**

Every LLP shall have minimum 2 designated partners of which one should be resident in India.

➤ **WHO CAN BE DESIGNATED PARTNER?**

Only individuals can be designated partners. At least one of them shall be a resident in India.

If bodies corporate are partners in LLP, it can nominate an Individual as Designated Partner.

The term 'resident in India' means a person who has stayed in India for a period not less than 182 days during the immediately preceding one year.

If at any time less than two partners are designated as Designated Partner then all the partners shall be deemed to be Designated Partners.

➤ **DISQUALIFICATION OF DESIGNATED PARTNER**

The persons with following disqualification are not eligible to be appointed as designated partners:

- is an undischarged insolvent, or has at any time within the preceding 5 years adjudged insolvent;
- suspends or has at any time within the preceding 5 years suspended payment to his creditors and has not at any time within the preceding 5 years made a composition with the creditors;
- is or has been convicted by a Court of any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than six months.

➤ **APPOINTMENT OF DESIGNATED PARTNERS**

Designated Partners shall be appointed in accordance with the provision contained in LLP Agreement. It may provide for rotation of partners and other means and manner of appointment.

➤ **CEASING TO BE DESIGNATED PARTNER**

Any designated partner may cease to be a designated partner according to the provisions of the LLP agreement.

➤ **CONSENT TO BECOME DESIGNATED PARTNER**

An individual who agrees to become designated partner has to give consent in Form 4 to the LLP.

➤ **FILING WITH REGISTRAR**

LLP shall file with the Registrar the particulars of every individual who has given his consent to act as designated partner in Form 4. This Form has to be filed within 30 days from the date of his appointment.

➤ **DUTIES OF DESIGNATED PARTNER**

The designated partner shall be responsible for compliance of the provisions of this Act including filing any document, return, statement etc and shall be liable for penalties imposed on LLP for any contravention of the provisions relating to compliance, etc.

➤ **CHANGES IN DESIGNATED PARTNERS**

If any vacancy of designated partner arises, LLP may appoint designated partner within 30 days of a vacancy arising for any reason.

➤ **PUNISHMENT**

In case LLP having less than one resident designated partners at any time, then LLP and partners shall be liable to fine, which shall not be less than ` 10000 / but not exceeding Rs. 5 Lakh.

9. ADMISSION, RESIGNATION, REMOVAL OF PARTNER AND TRANSFER OF INTEREST

➤ **ADMISSION**

No person can be introduced as a partner without the consent of all the existing partners.

➤ **CESSATION OF PARTNER**

Any partner may cease to be partner as under :

- In accordance with provision of LLP Agreement.
- Upon partner becoming disqualified in accordance with LLP Act, 2008.
- Upon Death of partner.
- Upon giving 30 days notice of intention of retirement to other partners.

➤ **FILING OF FORMS**

When a person is admitted as new partner, the LLP has to file Form 4 within 30 days from the date he becomes partner.

LLP Agreement needs to be modified to incorporate changes in constitution.

➤ **EXPULSION OF PARTNER**

No majority of the partners can expel a partner unless a power to do so has been conferred by express agreement between the partners. In other words if the LLP agreement specifically allows expulsion or removal of a partner, the partners can remove or expel any partner as per the provision of the agreement. If any partner is removed, then the procedure regarding filing of Forms 4 amendment in LLP Agreement etc., as given for 'Cessation of Partner' has to be followed.

➤ **TRANSFER OF PARTNERS' RIGHTS**

Any partner can transfer his right to share the profits and losses and to receive distribution in accordance with the LLP agreement.

The transfer of the rights by the partner does not by itself cause dissociation of the partner or a dissolution and winding up of the LLP.

The transfer of the right does not, by itself, entitle the transferee to participate in the management or conduct of the activities of the LLP. Moreover the transferee cannot access information concerning the transactions of the LLP.

10. FOREIGN LIMITED LIABILITY PARTNERSHIPS

➤ **DEFINITION**

"Foreign limited liability partnership" means a liability partnership formed, incorporated or registered outside India which establishes a place of business within India".

➤ **RULES REGARDING FOREIGN LIMITED LIABILITY PARTNERSHIPS**

The Central Government has the power to make rules in relation to establishment of place of business (POB) by foreign limited liability partnerships within India and carrying on their business. Foreign LLP intending to establish place of business in India shall first reserve its name and then apply in Form 27 within 30 days of establishing POB in India. The fee structure applicable to Foreign LLP is different from normal LLP.

11. ACCOUNTS AND ANNUAL RETURN :

➤ **MAINTENANCE OF BOOKS OF ACCOUNT**

The LLP shall maintain proper books of account as may be prescribed relating to its affairs for each year of its existence on cash basis or accrual basis. The account books are to be maintained at its registered office and shall be preserved for period of 8 years.

➤ **RECORDS TO BE MAINTAINED**

The books of accounts shall be kept in such a manner which depicts the following:

- ❖ The financial position of LLP.
- ❖ Enable the preparation of Statement of Account and Solvency which complies requirement of the Act.
- ❖ Particulars of all sum received and expended.
- ❖ Recording of Asset and Liabilities of LLP.
- ❖ Statement of cost of goods purchased, Inventories, work-in progress, finished goods and cost of goods sold.
- ❖ Any other matter as may be decided by the partners.

➤ **FILING OF STATEMENT OF ACCOUNTS AND SOLVENCY**

The LLP shall prepare within 6 months from the end of the financial year a Statement of Account and Solvency for the financial year as at the last day of the financial year. It shall be prepared in the Form 8 and be filed within 60 days of the end of six months of the financial year to which financial statement relates. However, LLP incorporated after 1st October may opt to close its accounts on next 31st March and hence are not required to file its 1st Statement of Accounts and Solvency.

➤ **ANNUAL RETURN**

➤ **TIME LIMIT**

Every LLP shall file Annual Return with the Registrar within 60 days from the date of closure of the financial year. It shall be in Form 11. The annual return of LLPs with a turnover upto Rs. 5 crore or contribution upto Rs. 50 lakhs shall be accompanied by a certificate by a designated partner other than the signatory to the annual return, to the effect that the annual return contains true and correct information.

➤ **CERTIFICATE BY COMPANY SECRETARY**

The Annual Return shall be accompanied by a certificate from a company secretary that he has verified the particulars including from the book and records of the LLP and found them to be true and correct. The certification from CS is required in the following cases :

- Contribution is in excess of ₹ 50 Lakhs; OR
- Turnover in excess of ₹ 5 crores.

➤ **FEES PAYABLE WITH THE ANNUAL RETURN**

The Annual Return has to be filed with fees given in Annexure A.

➤ **PENALTY**

Any LLP which fails to file Annual Return, shall be punishable with fine, which shall not be less than ₹ 25,000/- but not exceeding ₹ 5,00,000/-.

Every Designated Partner of the LLP shall be punishable with fine, which shall not be less than ₹ 10,000/- but not exceeding ₹ 1,00,000/-.

12. STATUTORY AUDIT

The accounts are to be audited if turnover of LLP exceeds ₹ 1 Crore or Contribution exceeds ₹ 25 lakhs. The Central Government may exempt any class of LLP's from the requirement of audit.

➤ **APPOINTMENT OF AUDITORS**

LLPs have to appoint Statutory Auditor for each financial year unless it is exempt from audit. It can appoint more than one auditor for this purpose.

LLP's have to appoint auditor within 30 days before the end of the financial year.

The designated partners may appoint an auditor:

- a) At any time for the first financial year. However the appointment has to be made before the end of the first financial year.
- b) To fill a casual vacancy in the office of auditor.

ELIGIBILITY OF AUDITOR

Only Chartered Accountants can be appointed as a Statutory Auditor.

➤ **HOLDING OFFICE**

An Auditor shall hold office from the day the previous auditor ceases to hold office and up to the end of the next period for appointing auditor unless re-appointed.

➤ **CONTINUATION OF EXISTING AUDITOR**

If the existing auditor is re-appointed, then he will continue to be Auditor of the LLP. However, if no auditor has been appointed by the next period, the existing auditor is deemed to be re-appointed as auditor. However, there are certain exceptions to this provision.

➤ **REMUNERATION OF AUDITOR**

The Designated Partners can fix the remuneration of the auditor. However, if there is any specific provision regarding fixing of remuneration in the LLP Agreement, then the provision has to be followed.

➤ **REMOVAL OF AUDITOR**

The Auditor can be removed by the LLP by following the procedure laid out in the LLP Agreement.

If the LLP agreement is silent about the removal of the Auditor, then consent of all the partners is required for the removal of the auditor.

➤ **RESIGNATION OF AUDITOR**

An Auditor may resign his office by giving a notice in writing to that effect. The notice has to be given to the LLP at their registered office.

13. MERGER AND WINDING UP OF LLP

Compromise by LLPs with their creditors or arrangements, including mergers and amalgamations are permissible (Rule 35 of the LLP Rules) Section 58 of the LLP Act provides for compromise, arrangements or reconstruction of LLPs

Winding up of an LLP may be either voluntary or by the Tribunal. Following are grounds of winding up of an LLP

- a. If the LLP decides (by resolution) that the LLP would be wound up by the tribunal.
- b. If the number of partners of LLP is reduced below two
- c. If LLP is unable to pay its debts,
- d. If the LLP has acted against the interests of the sovereignty and integrity of India, the security of state or public order,
- e. If the LLP has made a default in filing with the Registrar the statements of accounts and solvency or annual return for any five consecutive financial years;
- f. If the tribunal is of the opinion that it is just and equitable that the LLP be woundup.

Section 37 of the LLP act provides for the circumstances under which the name of a defunct LLP could be removed by the Registrar.

14. DISTINGUISHING FEATURES OF LLP & UNLIMITED LIABILITY OF PARTNERS

- Every partner is agent of LLP and not of other partners unlike Indian Partnership Act which provides that partners are mutual agent of each other. Hence, partners liability in normal case is to the extent of his contribution unlike firm under Indian Partnership Act, 1932 where liability of the partner is unlimited and joint and several.
- LLP is not bound by anything done by the partner where he has no authority to act for the LLP in doing a particular act.
- LLP is liable if partner is liable to any person as a result of wrongful act or omission on his part in the course of business of LLP or with its authority.
- A partner is personally liable for his own wrongful act or omission but shall not be personally liable for the wrongful act or omission of any other partner of LLP.
- Where credit is received by LLP by means of any person wrongfully representing himself as partner of LLP, such credit shall be refunded to the person from whom it is received.
- The legal heirs or his estate shall not be liable for any act done by LLP after the death of the partner though the deceased partner's name is used by the LLP.
- The liability of LLP and all the partners shall be unlimited who has knowledge of any act done with intent to defraud creditors or any other persons or done with fraudulent purposes.
- LLP, all its partners, DP and all the employees who has knowledge of any act done with intent to defraud creditors or any other persons or done with fraudulent purposes shall be liable to pay compensation to any person who has suffered the loss or damage by reason of such conduct.
- The court or tribunal may reduce or waive penalty leviable against any partner or employee of LLP provided :
 - i. such person has provided useful information during investigation of LLP;
 - ii. where information given by such person leads to LLP or any partner or employee being convicted under this act or any other act.

15. INCOME TAX PROVISIONS

- LLP is included in the definition of the firm for all the purposes and accordingly taxation of LLP shall be in line with the firm. Accordingly, profit will be taxed in the hands of LLP and not in the hands of partners.
- However, provisions of presumptive taxation is not applicable to LLP.
- Remuneration to partners will be taxed as Income from business and profession in their hands.
- Where Capital Asset is introduced by the partner in LLP, the amount to be recorded would be fair value given by authorized valuer and not any amount recorded in the books of account. Accordingly, partner liability to capital gain would increase on this account.
- Conversion of firm (whether registered or not) established under Indian Partnership Act, 1932 to LLP shall not attract any capital gain tax liability.
- Conversion of Private companies and unlisted Public companies to LLP shall not attract capital gain tax liability in the hands of LLP and shareholder subject to compliance of Sec. 47 (xiii b) of Income-tax Act, 1961.
- Conversion within compliance of Section 47 (xiii b) of the Income-tax Act, 1961 shall permit the following :
 - Carry forward of losses and depreciation allowances.
 - Opening WDV of resultant LLP for the purpose of depreciation shall be closing WDV of firm or company as the case may be.
 - Non compliance of any of the provisions of the Section 47(xiii b) of Income-tax Act, 1961 shall attract tax liability in the hand of resultant LLP and / or shareholder in the year of default.

16. CRITICAL ISSUES

- Minor and HUF cannot be partner in LLP. There would be difficulty in converting firm to LLP especially where minors or HUF are partners. The basic conditions of converting firm/companies to LLP is that all the partners/shareholder shall become partner of the newly formed LLP.
- Similarly when shares are held in the name of Trust, conversion from companies to LLP would be difficult as Trust cannot be partner in newly formed LLP.
- Companies having security interest over its assets cannot get converted to LLP. This would result in very few companies going for conversion as many companies have borrowed funds by creating charges over its assets.
- Even Income-tax Act does not permit companies to convert to LLP if turnover in last three preceding years exceeds ₹ 60 lakhs. In present scenario, this limits seems to be meaningless and would certainly restrict path to conversion to LLP.

- Once the Name is approved and LLP is incorporated it is not all over. LLP would be forced to change its name in case of a complaint by either of following entities within 24 months of incorporation.
 - Companies registered under Companies Act, 1956.
 - Foreign Companies.
 - Foreign LLP and Indian LLP.
 - Firm whether registered or not established under Indian Partnership Act, 1932.
 - Registered Trade Mark holder
 - Person holding application which is subject matter of registration for Trade Mark.
 - Central Govt if it is of opinion that name is undesirable.

Data relating to Foreign LLP, Foreign Companies, Firm established under Indian Partnership Act, 1932, Trade Mark holder, etc., are not available for scrutiny at the time of making name reservation application. This would cause great hardship as all communication content shall be subject to change including established goodwill of the business entity.

17. INTEGRATION OF LLP CELL WITH THE MCA

The ministry of Corporate affairs has integrated the LLP system into MCA-21 in the month of June 2012 by allowing filing and approval of LLP forms at MCA-21 website (www.mca.gov.in) for better e-governance facility for stakeholders, by making necessary changes in e-forms.

18. FEES PAYABLE

➤ TABLE A : FILING VARIOUS DOCUMENTS BY LLP (OTHER THAN FOREIGN LLP)

Contribution	Fees (₹)
LLP whose contribution does not exceed ₹ 1 lakh	50
LLP whose contribution exceeds ₹ 1 lakh but does not exceed ₹ 5 lakhs	100
LLP whose contribution exceeds ₹ 5 lakhs but does not exceed ₹ 10 lakhs	150
LLP whose contribution exceeds ₹ 10 lakhs	200

➤ TABLE B : FOR REGISTRATION OF LLP (OTHER THAN FOREIGN LLP)

Contribution	Fees (₹)
LLP whose contribution does not exceed ₹ 1 lakh	500
LLP whose contribution exceeds ₹ 1 lakh but does not exceed ₹ 5 lakhs	2000
LLP whose contribution exceeds ₹ 5 lakhs but does not exceed ₹ 10 lakhs	4000
LLP whose contribution exceeds ₹ 10 lakhs	5000

19. VARIOUS COMPLIANCES AND FILING OF FORMS :

SUBJECT	SECTION	RULES	FORM
DP	7, 8, 9	7, 8, 9	4 and 4A (if required)
Changes Partner and in particulars	5, 6, 24, 25	22	4 and 4A (if required)
Foreign LLP	59	34	25, 27-29
Incorporation	11,12	11-14	1, 2,3
Service of Documents		15	
Address	13	16, 17	12, 15
Name	16-19	18-20	1, 5, 23, 25
LLP Agreement	23	21	3, Schedule I
Contribution	32, 33	23	

Financial/Annual return	34-36	24-26	8, 11
Electronic Filing		36	
Strike off 75	37	24	
Name of LLP			
Conversion	55-58	32-33	17, 18 Schedules II to IV

20. MISCELLANEOUS PROVISIONS:

- Investigation : There are certain provisions by which investigation into the affairs of LLP may be conducted by Central Govt. either *suomoto* or upon application from partners and / or creditors.
- Public Documents: The following documents are public documents and can be available for inspection.
 - Incorporation Document Form 2
 - Name of Partner and Changes Form 4
 - Statement of Accounts and Solvency Form 8
 - Annual Return Form 11

However, LLP Agreement and content of Form 3 are not available for inspection.
- Defunct LLP : Registrar has power to strike off the name of LLP if it does not carry on the business for the period more than two years. LLP can file Form 24 requesting Registrar to strike off LLP names if no business is carried on for more than one year. This is easy exit route to come out of statutory compliances relating to LLP rather than to adopt long route of winding up.
- Winding Up : LLP may be wound up by Tribunal –
 - if number of partners of LLP is reduced below two for a period more than six months;
 - if LLP unable to pay its debt;
 - acted against the interest and integrity of India;
 - made default in filing of Statement of Accounts & Solvency or Annual Return for any five consecutive years;
 - Tribunal is of opinion that it is just and equitable that the LLP be wound up.

21. FOREIGN DIRECT INVESTMENT IN LLP

LLPs with Foreign Direct Investment (FDI) will be allowed, through the Government approval route, in those sectors/activities where 100% FDI is allowed, through the automatic route and there are no FDI-linked performance related conditions. By FDI-linked performance related conditions, it is meant that in sectors, where conditions like minimum capitalization etc are prescribed like development of Townships, NBFC, even though 100% FDI is allowed under automatic route, LLP's will not be allowed to bring FDI with the approval of the Government of India.

LLPs with FDI will not be allowed to operate in agricultural / plantation activities, print media or real estate business.

LLPs with FDI will not be eligible to make any downstream investments, which mean LLP having FDI, can not make further investment in LLP or companies engaged in any business, even though 100% FDI is allowed under those sectors.

A) Funding of LLP:

- Downstream Investment by company: An Company, having FDI, will be permitted to make downstream investment in LLPs only if both the company, as well as the LLP is operating in sectors where 100% FDI is allowed, through the automatic route and there are no FDI-linked performance related conditions.
- Investment by Cash Consideration: Foreign Capital participation in the capital structure of the LLPs will be allowed only by cash considerations, received by inward remittance, through normal banking channels, or by debit to NRE/FCNR account of the person concerned, maintained with an authorised dealer / authorised bank. For making non cash / intangible contribution towards the capital of the LLP, permission of Government of India will be required.
- FII/Foreign Venture Capital : Foreign Institutional Investors (FIIs) and Foreign Venture Capital Investors (FVCIs) will not be permitted to invest in LLPs.
- External Commercial Borrowings: LLPs will also not be permitted to avail External Commercial Borrowings (ECBs)

B) Other provisions:

In case the LLP with FDI has a body corporate that is a designated partner or nominates an individual to act as a designated partner in accordance with the provisions of Section 7 of the LLP Act, 2008, such a body corporate should only be a company registered in India under the Companies Act, 1956 and not any other body, such as an LLP or a trust.

For such LLPs, the designated partner "resident in India", as defined under the 'Explanation' to Section 7(1) of the LLP Act, 2008, would also have to satisfy the definition of "person resident in India", as prescribed under Section 2(v)(i) of the Foreign Exchange Management Act, 1999.

The designated partners will be responsible for compliance with all the above conditions and also liable for all penalties imposed on the LLP for their contravention, if any.

Conversion of a company with FDI, into an LLP, will be allowed only if the above stipulations (except clause 3.2.5(e) which would be optional in case of a company) are met and with the prior approval of FIPB/Government.

22. PENALTIES LEVIABLE UNDER LLP ACT, 2008 AND LLP RULES, 2009 ARE AS UNDER:

NATURE OF OFFENCE	LLP	DP	Partner
1. If number of partners reduced below two for more than six months.	NA	NA	Personally liable for all obligation of LLP during that period
2. Section 7(1) – if no DP is resident in India	Min ₹ 10,000/- Max. ₹ 5,00,000/-	N. A.	Min ₹ 10,000/- Max. ₹ 5,00,000/-
3. Non-filing of particulars of DP within 30 days & having disqualified DP	Min ₹ 10,000/- Max. ₹ 1,00,000/-	N. A.	Min ₹ 10,000/- Max. ₹ 1,00,000/-
4. Filing false particulars in incorporation document	N. A.	Min ₹10,000/- Max. ₹ 5,00,000/- & up to 2 years imprisonment	Min ₹ 10,000/- Max. ₹ 5,00,000/- & up to 2 years imprisonment
5. Non-filing of particulars of change in registered office	Min ₹ 2,000/- Max. ₹ 25,000/-	N. A.	Min ₹ 2,000/- Max. ₹ 25,000/-
6. Not complying the direction to change the name	Min ₹ 10,000/- Max. ₹ 5,00,000/-	Min ₹10,000/- Max. ₹ 1,00,000/-	N. A.
7. Non-compliance of declaration in its invoice and official correspondence	Min ₹2,000/- Max. ₹ 25,000/-	N.A.	N. A.
8. Non-filing of particulars of ceasing partner or non filing of particulars of change in name & address of partner within 30 days.	Min ₹ 2,000/- Max. ₹ 25,000/-	Min ₹ 2,000/- Max. ₹ 25,000/-	N. A.
9. Non-informing to LLP about change in name & address	N. A	N. A.	Min ₹ 2,000/- Max. ₹ 25,000/-

10. Business carried on with the intention to defraud creditors and in fraudulent manner (every person who has such knowledge)	N.A.	Min ₹50,000/- Max. ₹5,00,000/- & up to 2 year imprisonment	Min ₹ 50,000/- Max. ₹ 5,00,000/- & up to 2 year imprisonment
11. Non-maintenance of books of accounts in prescribed manner or failure to submit statement of Accounts & Solvency within due date or failure to get accounts audited.	Min ₹ 25,000/- Max. ₹ 5,00,000/-	Min ₹ 10,000/- Max. ₹ 1,00,000/-	N. A.
12. Non filing of annual return within due date	Min ₹ 25,000/- Max. ₹ 5,00,000/-	Min ₹ 10,000/- Max. ₹ 1,00,000/-	NA
13. False Particulars by any person in return documents filed with Registrar	N. A.	Min ₹1,00,000/- Max. ₹ 5,00,000/- & up to 2 years imprisonment	Min ₹ 1,00,000/- Max. ₹. 5,00,000/- & up to 2 years imprisonment
14. Failure to comply summons and requisition by Registrar	NA	Minimum ₹ 2000 Maximum ₹ 25000	Minimum ₹ 2000 Maximum ₹ 25000
15. Delay in submission of document up to 300 days	Additional fee of ₹ 100/- per day	NA	NA
16. Non-declaration of statement as required for 12 month from the date of conversion of firm	Min ₹ 10,000/- Max. ₹ 1,00,000/- & further ₹ 50/- to ₹ 500/- per day if default continues	NA	NA
17. Non-declaration of statement as required for 12 months from the date of conversion of private company or unlisted public company	Min ₹ 10,000/- Max. ₹ 1,00,000/- & further ₹ 50/- to ₹500/- per day if default continues	NA	NA
18. Delay in filing Form 3	Additional fee of ₹100/- per day of default	NA	NA
19. Delay in filing Form 4	Additional fee of ₹100/- per day of default	NA	NA