

**LEGAL PROVISIONS RELATING TO  
LIMITED LIABILITY PARTNERSHIP (LLP)**



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### MEANING OF LIMITED LIABILITY PARTNERSHIP

A Limited Liability Partnership (LLP) is a body corporate, with a distinct legal entity separate from that of its partners. It has perpetual succession and a common seal. A LLP, which is a separate legal person, will be liable to the third parties independent of the other partners. Any change in its partners, will not affect the existence, rights or liabilities of the limited liability partnership. Like a company, a limited liability partnership can do all the things an individual or company can do. It can make contracts, sue or be sued, hold property in its name etc..

The Limited Liability Partnership (LLP) is viewed as an alternative corporate business vehicle that provides the benefits of limited liability but allows its members the flexibility of organizing their internal structure as a partnership based on a mutually arrived agreement. A LLP combines the advantages of both the Company and Partnership into a single form of organization.

The Limited Liability Partnership form of business organization was introduced in India by way of Limited Liability Partnership Act, 2008 (LLP Act 2008) which came into effect by way of notification dated 31st March 2009.

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This form of business structure has been prevalent in many countries including USA, UK, Japan, and Singapore. While retaining this basic structure, different countries have framed their laws with suitable changes. A brief mention about the LLP laws prevalent in other countries will be most appropriate at this juncture.

In the United States of America, Limited liability partnerships emerged in the early 1990s while only two states allowed LLPs in 1992, over forty had adopted LLP statutes by the time LLPs were added to the Uniform Partnership Act in 1996. In USA, each individual State has its own law governing formation of LLP and the liability of the partners varies from state to state.

In some U.S. states (including California and New York), LLPs can only be formed among professional, particularly lawyers, accountants and architects. This position is very different from Japanese LLPs as Japanese LLPs may not be used by lawyers or accountants, as these professions are required to do business through an unlimited liability entity.

Limited liability partnerships were introduced to Japan in 2006. A Japanese LLP is not a corporation, but rather exists as a contractual relationship between the partners, similarly to an American LLP.

In the United Kingdom LLPs are governed by the Limited Liability Partnerships Act 2000. A UK Limited Liability Partnership is a Corporate body - that is to say, it has a continuing legal existence independent of its Members. It has no restriction on the number of its partners and each partner's liability is limited to the extent of the contribution made and the liability accepted by that partner to the LLP.

In Singapore, LLPs are formed under the Limited Liability Partnerships Act 2005. This legislation draws on both the US and UK models of LLP, and like the latter establishes the LLP as a body corporate. However for tax purposes it is treated like a general partnership, so that the partners rather than the partnership are subject to tax.

As on 28/05/2012, 9395 LLPs have been registered in India.

### **Forms of Business Organisations in India**

There are various forms in which an enterprise can be started in India, namely:

- 1) Sole Proprietorship
- 2) Partnership

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- 3) Companies
  - (a) Private limited companies
  - (b) Public limited companies
- 4) Hindu Undivided Family (HUF)
- 5) Private Trusts
- 6) Co-operative societies
- 7) One Person Company (proposed under the Companies Bill 2011)

When choosing the most appropriate form of organisation for a particular business activity, a number of factors are taken into consideration.

A brief outline of the distinguishing characteristics of each of the above forms of business organisation are given below:

- 1) Sole Proprietorship-
  - a) It is a single person operation. There is no difference between the owner and the company.
    - a) It is the easiest to set up
    - b) Profit of the company is the owner's income.
    - c) Liability is Unlimited i.e. Losses may have to be made good out of the personal assets of the proprietor
    - d) The greatest advantage of such an organization is that it requires minimal of legal documentation.

There is no separate law on sole proprietorships

### 2) Partnership

- a) Two or more persons can start a partnership.

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- b) The maximum number of partners which are permissible in a firm is 20 for other than banking business and in the case of banking business it is 10
- c) A Partnership deed in writing clearly specifying the name of the partnership firm, the names of the partners, the capital to be contributed by each partner, the profit or loss sharing ratio between partners, the business of the partnership, the duties, rights, powers and obligations of each partner and other relevant details.
- d) It must be signed by all partners and witnessed by independent persons.
- e) The partnership deed must clearly specify the duties and authorities of all partners.
- f) Details of salary and other payments to partners must also be clearly specified in the partnership deed.
- g) It is not compulsory for registration of partnership deeds; however, registration ensures certain legal rights to the firm and its partners.
- h) The advantages of this form of set-up are that two or more people can come together and start a new business. The disadvantages of this set-up are more or less the same as that of a sole proprietorship concern.
- i) The liability of partners in Indian partnerships is joint and several.
- j) There is no minimum capital to be subscribed for a partnership.
- k) A partnership may be dissolved with the consent of all the partners or in accordance with the provisions in the partnership agreement.

Partnerships are governed by Partnership Act, 1932

### 3) Companies

- a) Company as a legal person – can borrow, lend, enter into contracts, can sign, can sue and be sued
- b) Has a life beyond the life of the promoters
- c) Can hold assets of its own

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- d) Company seal acts as its signature
- e) Comes into existence through a formal and legal “incorporation” process.
- f) Share holders are called “members”
- g) The liability of shareholders of a limited company is limited to the extent of unpaid share or to the tune of the unpaid amount guaranteed by the shareholder.
- h) Memorandum and Articles of Association-The Memorandum of association is the charter of the company and specifies the name of the company, the business and activities it can carry, its address, the capital of the company and details of the persons who have formed the company.
- i) The Articles of association of the company specify the rules and regulations of the company, the rights, duties and liabilities of the members and directors
- j) A memorandum of association and articles of association have to be filed with the Registrar of Companies in order to incorporate a company

In India, companies are broadly classified as Public Sector (Government owned) and Private Sector Companies. Private Sector companies may further be classified as Private Limited and Public Limited Companies.

### 3) (a) Private Limited Companies

Private Limited Company means a company formed with the word ‘private’ in its name .A private limited company can be formed with a minimum of 2 members.

The Articles of Association of such companies includes the following restrictions:-

- articles of association restricts the right to transfer its shares
- limitation to the number of shareholders to 50 (excluding shareholders who were employees and former employees when shares were issued to them)
- prohibition towards invitation to the public to subscribe to shares and debentures

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- shares of private limited companies can not be listed on the stock exchange and publicly traded.
- The minimum paid up capital for a private company would be Rs. 100,000.

Following are some of the privileges and exemptions of a private limited company:

- 1) Minimum number of members are 2 (7 in case of public companies)
- 2) Prohibition of allotment of the shares or debentures in certain cases unless statement in lieu of prospectus has been delivered to the Registrar of Companies does not apply.
- 3) Restriction contained in Section 81 related to the rights issues of share capital does not apply. A special resolution to issue shares to non-members is not required in case of a private company.
- 4) Restriction contained in Section 149 on commencement of business by a company does not apply. A private company does not need a separate certificate of commencement of business.
- 5) Provisions of Section 165 relating to statutory meeting and submission of statutory report do not apply.
- 6) one (if 7 or fewer members are present) or two members (if more than 7 members are present) present in person at a meeting of the company can demand a poll.
- 7) In case of a private company which is not a subsidiary of a public limited company or in the case of a private company of which the entire paid up share capital is held by the one or more body corporate incorporated outside India, no person other than the member of the company concerned, shall be entitled to inspect or obtain the copies of profit and loss account of that company.
- 8) Minimum number of directors is only two. (3 in case of a public company)

### 3) (b) Public Limited Companies

Public Limited Company means a company which is not a private limited company. It does not carry the word 'private' in its name and also do not have



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the restrictions as carried out in the private limited companies. Public limited companies are generally large companies with widespread shareholding with shares being quoted in the stock exchange. The minimum paid up capital for a public company would be Rs. 500,000.

Companies are governed by The Companies Act, 1956

### 4) Hindu Undivided Family (HUF)

This form of organization exists under Hindu law and is governed by the Law of Succession. The Joint Hindu Family is a form of business organisation in which the Family possesses some inherited property. The inheritance of the property is among the male members. The share of ancestral property is inherited by a member from his father, Grandfather and great grandfather. Only Hindus can have this form of organization.

The important features of the joint Hindu family business are as follows:

- (i) **Membership by birth:** Membership of the joint Hindu family business is automatic by birth of a male child and is not created by an agreement between persons.
- (ii) **Management:** The management vests in the Karta, the eldest member of the family. However, the Karta may associate other members of the HUF to assist him.
- (iii) **Liability:** The Karta has unlimited liability, i.e., even her/his personal assets can be used for payment of business dues but every other coparcener has a limited liability up to his share in the HUF property.
- (iv) **There is no restriction on the number of coparceners of the HUF business.** However, the membership is restricted to three successive generations. A male child at the time of birth becomes a coparcener. Thus, an HUF does not restrict membership to minors.
- (vi) **Unaffected by death:** The HUF business continues even after the death of a coparcener including the Karta. The next senior most surviving male member of the HUF becomes the Karta. However, it may come to an end if all the members notify that they are not members of the Joint Hindu Family.

### 5) Private Trusts

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A Trust is created when a donor attaches a legal obligation to the ownership of certain property based on his confidence placed in and accepted by the donee or trustee, for the benefit of another.

The person who intends to create the trust with regard to certain property for a specified beneficiary and who places his confidence in another for this arrangement is called the Author of the Trust; the person who accepts the confidence is called the Trustee; the person whose benefit the confidence is accepted is called the Beneficiary; the subject matter of the trust is called Trust Property.

The Trustees control the trust's assets and decide how the income (and capital) of the trust is to be distributed, and ensure that it is in line with the charitable purposes of the trust.

The author of the trust must indicate with reasonable certainty the following:

- Intention to create trust
- Purpose of the trust
- Beneficiaries of the trust, and
- The trust property

A trust can be created-

- a. By any person competent to contract
- b. With the permission of a principal civil court of original jurisdiction by or on behalf of a minor
- c. Any person or corporation capable of transferring property or interest in property can create a Trust
- d. A company can create a Trust provided it is intra vires the objects of the company and within the powers mentioned in its Memorandum of Association.

Trust can be a public trust, set up for the benefit of the general public or a private family trust that is restricted to specified individuals

Trusts are governed by The Indian Trusts Act ,1882

6) Co-operative Societies

A cooperative form of business organisation is different from other forms of organisation. It is a voluntary association of persons for mutual benefit and its aims are accomplished through self help and collective effort.

The main principle underlying a cooperative organisation is mutual help, i.e., each for one and all for each. A minimum of 10 people are required to form cooperative society. It must be registered with the Registrar of Cooperative Societies under the Cooperative Societies Act.

The capital of a cooperative society is raised from its members by way of share capital. It can also obtain additional resources by way of loans from the State and Central Cooperative Banks.

Although a cooperative society has much in common with partnership there are differences between the two types of organization. In a partnership mutual benefit is restricted to partners only, but in a cooperative society it extends to its member as also the public. For example, in a consumer cooperative store or a cooperative credit society, the benefits are available to the members as well as the general public. Besides, partnership requires the existence of some business activity whereas a cooperative may be formed whenever individuals have common needs which are difficult to fulfill single handed. Also, registration is optional in the case of partnership but it is compulsory for a cooperative society.

The main advantages of a co-operative society are

- Ø Easy formation
- Ø Open membership
- Ø Democratic management
- Ø Limited liability (to the extent of capital contributed by the members)
- Ø Stability (as it enjoys separate legal existence)
- Ø Economic operations
- Ø Government patronage

Cooperative societies are governed by the state laws. Multi State Cooperative having activities in more than one state are governed by Multi State Cooperative Act 2002

7) One Person Company

Under Clause 2(62) of the Companies Bill 2011, 'One Person Company' means a company which has only one person as a member. It is a one shareholder corporate entity, where legal and financial liability is limited to the company only.

The intent for introduction of the concept of 'One Person Company' is apparently to permit entrepreneurship of a single individual to obtain the benefit of a corporate form of organization.

Some important features of the Companies Bill 2011 in this regard are:

A company may be formed for any lawful purpose by one person, where the company to be formed is to be One Person Company that is to say, a private company, by subscribing his name to a memorandum and complying with the requirements of this Act in respect of registration:

The memorandum of One Person Company shall indicate the name of the other person, with his prior written consent in the prescribed form, who shall, in the event of the subscriber's death become the member of the company and the written consent of such person shall also be filed with the Registrar at the time of incorporation of the One Person Company along with its memorandum and articles. Such other person may withdraw his consent in such manner as may be prescribed.

The member of One Person Company may at any time change the name of such other person by giving notice in such manner as may be prescribed.

It shall be the duty of the member of One Person Company to intimate the company the change, if any, in the name of the other person nominated by him by indicating in the memorandum or otherwise within such time and in such manner as may be prescribed, and the company shall intimate the Registrar any such change within such time and in such manner as may be prescribed.

**Need for Limited Liability Partnership**

At the outset it is clarified that the Limited Liability Partnership Act 2008 (LLP Act 2008) does not restrict the benefit of LLP structure only to certain classes of professionals and will be available for use by any enterprise that fulfils the requirements of this proposed Act.

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The LLP form of business organization would enable entrepreneurs, professionals and enterprises providing services of any kind or engaged in scientific and technical disciplines, to form commercially efficient vehicles suited to their requirements. Owing to flexibility in its structure and operations, the LLP would also be a suitable vehicle for small enterprises and for investment by venture capital. Accordingly, the LLP form of Organization is available to Professionals, Service Providers, Traders and Manufacturers.

The existing organization structures in India, which are most commonly used - like proprietary concerns, partnerships and companies are subject to varying regulatory and tax requirements and are not suitable for some businesses and professions. In India, several professionals are barred from forming companies with limited liability.

In general Partnerships, the unlimited liability of the partners is an increasing cause of concern in light of general increase in the incidence of litigation for professional negligence; and the size of claims and the risk to a partners personal assets when a claim exceeds the sum of the assets of the partnership. The unlimited liability of the partners has been the chief reason why partnership firms have not grown in size to meet the challenges posed by international competition

The adverse consequences faced by such firms on account of unlimited liability are:

1. They are not able to increase in size to expand
2. They are unable to compete with international firms in the lucrative consultancy/advisory and non-statutory work markets.
3. They are not financially strong enough to spend on training and top class professional development.
4. There has been a general increase in the incidence of litigation on professional firms on grounds of professional negligence. The size of claims and consequently risk to partner's personal assets are severely restricting the growth of firms.
5. Newly qualified or less experienced persons are hesitant to join as partners for fear of having to bear liability of multiple partners.

Observing this scenario, in the year 1997, Abid Hussain Committee recommended legislation of LLP in India. Further on, the Government of India constituted a Committee under the Chairmanship of Shri Naresh Chandra in January 2003. The Naresh Chandra committee on "Regulation of Private Companies and Partnership" felt the need for professionals to consolidate and

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grow to compete with the best and the biggest in the world. The committee submitted its report in July 2003 and agreed to the suggestion of introducing the concept of 'limited liability', as per prevalent international norms, in India for partnership firms of professionals. The Committee however wanted to restrict the LLPs to professionals only and did not favour extension of LLP to trading or manufacturing firms.

Subsequently, Dr. J.J Irani Committee was appointed in August 2004 to examine the issue of Limited Liability Partnerships.

In India, a concept paper on Limited Liability Partnership Law was brought out by the Ministry of Company Affairs in 2005. In the year 2006 the Limited Liability Partnership Bill was introduced in the Parliament.

### **Chronology of Events in Introduction of Limited Liability Partnership Act 2008**

- The LLP Bill, 2006 introduced in the Rajya Sabha on 15th December, 2006 and referred to the Parliamentary Standing Committee on Finance.
- The Parliamentary Standing Committee on Finance submitted its report on 27th November, 2007.
- Taking into consideration the suggestions of the Standing Committee, the revised Bill, namely the Limited Liability Partnership Bill, 2008 was introduced in the Rajya Sabha on 21st October, 2008.
- Simultaneous to the introduction of LLP Bill, 2008, on 21st October, 2008, the LLP Bill, 2006 was withdrawn from Rajya Sabha.
- This LLP Bill, 2008 was considered and passed by Rajya Sabha on 24th October, 2008.
- The Lok Sabha granted its assent to the Bill on December 12, 2008.
- The Limited Liability Partnership Act, 2008 received the assent of the President on 7th January, 2009.
- The Limited Liability Partnership Act 2008 was published in the official Gazette of India on January 9, 2009
- Parliament enacted the Limited Liability Partnership Act 2008 and notified it on 31.03.2009
- Limited Liability Partnership Rules 2009 notified on 01.04.2009

- First LLP registered on 02.04.2009

### **Comparative Analysis of Limited Liability Partnership with Partnership form of business and Private limited liability company form of business**

In India, businesses mainly operate as companies, sole proprietorships and general partnerships. Each of these business structures has its own advantages and shortcomings and is subject to different regulatory and tax regimes. The primary intention of LLP is that its external structure should mirror that of the limited company but in terms of conduct of internal affairs it would be similar to traditional partnership.

The Partnership form of business fails to recognize the difference between Partnership and Partners. It also restricts the maximum number of partners to ten, in case of Banking business and twenty in case of other business and it imposes unlimited liability on each partner for acts committed by another and by Partnership as a whole.

The Private Company form of business, by its articles of association, limits the number of its members to fifty (excluding the past and present employees of the company), restricts the right of its members to transfer its shares and prohibits an invitation to the public to subscribe to any shares in or the debentures of the company.

As an alternative, Limited Liability Partnership (LLP) , addresses some of these concerns.

### **Comparison between traditional Partnership and LLP**

<b>Traditional Partnership</b>	<b>Limited Liability Partnership</b>
<b>Distinctions</b>	
Unlimited personal liability of each partner for dues of the partnership firm. Personal property of each partner also liable.	No personal liability of partner, except in case of fraud.
Written agreement not essential.	Incorporation document essential.
Partnership can be registered under Partnership Act. Registration is not	LLP is incorporated under LLP Act. Incorporation is mandatory.

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mandatory.	
Not a legal entity separate from its partners	It is a legal entity separate from its partners, having perpetual succession
Property cannot be held in name of partnership firm.	Property can be held in name of LLP.
Partnership deed/agreement is executed. Even verbal agreement is valid.	'Incorporation Document' is required to be executed. In addition, LLP Agreement is required in almost all cases, though such LLP agreement is not mandatory.
Documents are required to be filed with Registrar of Firms (of respective State)	Registrar of Companies (ROC) is the administrating authority.
Death of partner dissolves a firm, in absence of agreement	Death of partner does not dissolve LLP.
Minimum two and maximum twenty partners	Minimum two partners. No limit on maximum number of partners
Each partner can take part in business of firm.	Each partner can take part in business of firm, but LLP Agreement can provide to the contrary.
All partners are liable for statutory compliances under Partnership Act	Only designated partners are liable for statutory compliances as are required under LLP Act (not necessarily in respect of other Acts).
Partner cannot enter into business with firm, though he can give loan to firm.	Partner of LLP can enter into business with LLP. He can also give loans to LLP.
Every partner of firm is agent of firm and also of other partners. He can bind partnership firm as well as other partners by his acts.	Every partner of LLP is agent of LLP but not of other partners. Thus, he can bind LLP by his acts but not other partners. However, LLP agreement can restrict powers of individual partner.
Filing of accounts, statement of solvency and annual return not required.	Filing of accounts, statement of solvency and annual return not required.
Partnership can be 'at will' i.e. any partner can resign or dissolve firm	Individual partner can resign but cannot dissolve the LLP.
Death of partner dissolves partnership unless there is contract to contrary	Death of partner does not dissolve LLP.
Public notice is required for retirement of a partner.	Filing of return of retirement of partner with ROC is required, but no



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	provision for public notice of retirement of partner.
Partnership firm can be dissolved.	LLP can be wound up.
No specific provision to enter into compromise, arrangement, amalgamation, reconstruction etc. This can be done only under civil laws.	LLP can enter into compromise, arrangement, amalgamation, reconstruction etc.
Minor can be admitted to benefit of partnership.	There is no specific provision to admit minor to benefit of partnership. It is doubtful if this can be done.
<b>Similarities</b>	
Partner is not employee of firm	Partner is not employee of LLP.
Liability of a person for 'holding out', i.e. representing himself as partner, though he is not	Liability of a person for 'holding out' i.e. representing himself as partner, though he is not
Partner of firm entitled to remuneration only if partnership agreement so provides	Partner of LLP entitled to remuneration only if LLP agreement so provides
New partner can be introduced only with consent of all existing partners	New partner can be introduced only with consent of all existing partners, unless LLP Agreement provides otherwise.
Insolvent person cannot continue as partner of firm.	Insolvent person cannot continue as partner of LLP.
Rights of partnership can be assigned.	Rights of partnership can be assigned.
Partner liable to firm for any personal profits made by him by use of property, name or business connection of firm.	Partner liable to LLP for any personal profits made by him by use of property, name or business connection of LLP
Partner cannot undertake competing business without consent of other partners	Partner cannot undertake competing business without consent of LLP. Otherwise, liable to account for and pay profits to LLP
Partner liable to firm if he commits fraud.	Partner liable to LLP if he commits fraud.

#### Comparison between company and LLP

Company under Companies Act	Limited Liability Partnership
<b>Distinctions</b>	
Memorandum is to be filed with ROC	Incorporation Document is required

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	to be filed.
Memorandum should contain State in which incorporated.	Incorporation Document is not required to contain State in which incorporated. Thus, registered office can be changed to any place in India just by informing ROC subject to prescribed conditions.
Name to contain 'Limited' or 'Private Limited' as suffix	Name to contain 'Limited Liability Partnership' or 'LLP' as suffix
Articles are to be filed at the time of incorporation. Private company must have Articles. In case of public company, provisions of Table A apply if there are no Articles.	LLP Agreement is required to be filed later. In absence of LLP Agreement, mutual rights and duties will be as specified in first schedule to LLP Act, 2008. Thus, practically, each LLP must have LLP Agreement, though not mandatory.
Managing Director and Whole time Director to look after day to day administration.	Designated Partner to look after statutory compliances. Otherwise, all partners can look into affairs of the LLP. However, LLP can delegate powers to some partners who may be designated as 'Managing Partner', or 'Executive Partner' or any other name.
Individual director or member does not have authority in conduct of business of company.	Every partner has authority to conduct business of LLP, unless the LLP Agreement provides to contrary.
Restrictions on remuneration to director as per Companies Act	No restriction on remuneration to partner. Remuneration should be provided in LLP agreement.
Notice of change of director is to be given by company.	A partner who has resigned from LLP can himself file notice of his resignation to ROC.
Share, share certificate, register of members, transfer and transmission of shares etc. required.	No requirement of share and share certificate. Hence, no question of its issue, allotment, transfer, rectification of register etc.
Board meetings, general meetings are required.	No provision for regular meeting of Board and members. Partners can decide when and how to meet, delegation of powers etc. Provision is made that LLP should maintain minute book

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Charges are required to be registered	No provision for registration of charges.
Elaborate records and registers are required to be maintained	No records and registers have been prescribed.
Restrictions on Board regarding some specified contracts, contracts in which directors interested, investments, loans and guarantees to other companies	Partners are free to enter into any contract.
Disclosures required of contracts where directors are interested	No requirement of disclosures required of contracts where partners are interested, unless specified in LLP Agreement.
Elaborate provision relating to redressal in case of oppression and mismanagement	No provision relating to redressal in case of oppression and mismanagement
Specific provisions relating to nidhis, NBFC	No specific provisions relating to nidhis, NBFC
<b>Similarities</b>	
Limited liability and perpetual succession	Limited liability and perpetual succession
Must have common seal	Common seal is optional
Provisions of approval of name, change of name are similar.	Provisions of approval of name, change of name are similar.
ROC is the administrative authority	ROC is the administrative authority
Provisions of name, its approval and change are similar.	Provisions of name, its approval and change are similar.
No personal liability of individual director or member [except of director of private company in some cases like income tax and sales tax dues].	No personal liability of partner, except in case of fraud.
Complicated procedure for change of registered office, particularly when change is to other State	Simple procedure to change registered office of LLP anywhere in India just by informing ROC and following prescribed conditions.
Registrar of Companies (ROC) is the administrating authority.	Registrar of Companies (ROC) is the administrating authority.
Memorandum and Articles, details of directors, accounts, annual return, special resolutions etc. filed by LLP with ROC will be available for public inspection	Incorporation document, details of partners, accounts, statement of solvency and annual return filed by LLP with ROC will be available for public inspection

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Powers to Central Government to inspect records of company and to order investigation	Powers to Central Government to inspect records of company and to order investigation
Provisions of compromise, arrangement or reconstruction of companies are similar	Provisions of compromise, arrangement or reconstruction of LLP
Company can be wound up voluntarily or by order of Court	LLP can be wound up voluntarily or by order of Court
ROC can strike off name of defunct company.	ROC can strike off name of defunct LLP.

### Corporate Governance in LLP structure

Corporate Governance in the LLP form of business structure is ensured by mandatory provisions, for example:

- Two individuals must be “designated partners”; the responsibility for accounts and compliance with the LLP law rests with them. Penalty for default in compliance is imposed on them in their individual capacity.
- Secondly, the relevant partner has to face individual liability for any wrongful act, or omission, or for any act with fraudulent intent.
- Thirdly, the LLP Agreement must have provisions in critical specified areas; otherwise the provisions of First Schedule to the LLP Act 2008 will mandatorily apply.

### Business Activities of LLP

Section 11(1) of the LLP Act 2008 states that two or more persons associated for carrying on a lawful business with a view to profit can incorporate a LLP. Therefore, a LLP cannot be created for non-profit making activities and existence of business is a pre-requisite for the legal existence of LLP.

There is no exact universal definition of business, however generally in its most broadest meaning it includes all activity by the community of suppliers of goods and services. The expression ‘business’ is defined in the Income Tax Act, 1961, as any trade, commerce, manufacture or any adventure or concern in the nature of trade, commerce or manufacture.

Section 2(1) (e) of the LLP Act 2008 has defined the term ‘Business’ to include ‘every trade, profession, service and occupation’.

However, the Act does not define the terms trade, profession, service and occupation.

### **Multidisciplinary Partnerships**

At the outset it is clarified that the LLP framework is not restricted to professional services alone as was earlier recommended by Naresh Chandra Committee.

The LLP law has been touted as ushering in an era of organisations offering multi-disciplinary services. The World Trade Organisation (WTO) is mounting pressure on India for opening up of the multi-disciplinary professional services as a single window operation for the various multiplying foreign investors in India.

LLP will give the professions the much needed impetus of global presence and level playing field against their foreign counterparts. Currently, firms of the above professionals have partners from their own discipline. For instance, a CA partnership can have only CAs as its partners. But under the LLP model, CAs and CSs or even advocates can set up multi-disciplinary firms, which would act as a "one-stop" shop for people to avail various professional services.

### **Duration of LLP**

The duration of an LLP may be

- Perpetual
- For Particular Event
- For Specific Job

Whether the LLP is incorporated for a specific duration or not should be specified in the LLP Agreement

### **Micro, Small and Medium Enterprises (MSME)**

LLP has an immense role to play in the Manufacturing Sector. Around 95% of industrial units in the country are SMEs (Small and Medium Enterprises) and the manufacturing sector is dominated by these SMEs. LLP has an immense role to play in the Manufacturing Sector.

Over 90% of these SMEs are registered as proprietorships, about 2% to 3% as partnerships and less than 2% as companies as per a survey conducted by the

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ministry of small-scale industries. The reason of absence of Corporate Form in the manufacturing Sector is high compliance cost. Vice – Versa the presence of Proprietorship is due to complete flexibility and less compliance cost. But for this gain the sector is losing the credit facility from the bankers.

Now the Limited Liability Partnership form has opened the door for MSME Sector to enjoy the dual advantage of less compliance with higher access to credits in the market. Another advantage for SMEs that in the new LLP form, only the Limited Liability Partnership having turnover/contribution of more than Rs. 40/25 Lacs have to get their accounts audited as per the requirement of law providing a step ahead in the flexibility.

The LLP form of business would also promote entrepreneurship, particularly in relation to the knowledge-based industries such as the information technology and biotechnology sectors.

### **UNDERSTANDING LIMITED LIABILITY PARTNERSHIP IN BRIEF**

- Limited Liability Partnership was introduced by way of Limited Liability Partnership Act 2008 (LLP Act 2008) notified on 1st April 2009
- LLP Act 2008 contains 14 Chapters, 81 Sections , 4 Schedules and 31 Forms
- LLP is a Body Corporate
- It is a Legal entity separate from its partners
- It has Perpetual succession
- Can own assets in its name, sue and be sued.
- Name to contain 'Limited Liability Partnership' or 'LLP' as suffix.
- Unlike corporate shareholders, the partners have the right to manage the business directly
- One partner is not responsible or liable for another partner's misconduct or negligence.
- Liability of the partners is limited to their agreed contribution in the LLP
- Unlimited Liability in case of Fraud
- The Business of LLP should be 'for profit' business only
- Contributions by Partners may be tangible, intangible, movable or immovable.
- Partner may lend money to and transact other business with LLP.
- Any individual or body corporate can be a partner.
- Minimum of 2 partners and no maximum limit.

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- Minimum 2 individuals as Designated Partners, of whom at least one shall be resident in India.
- Every Designated Partners must obtain Designated Partner Identification Number (DPIN) from the Central Government. In case you already have a DIN (Director Identification Number), the same can be used as a DPIN.
- The mutual rights and duties of the partners of LLP and the mutual rights and duties of LLP and its partners shall be governed by LLP agreement between the partners or between LLP and its partners.
- In the absence of such agreement relationship of Partners and LLP would be governed as per Schedule 1 of LLP Act, 2008.
- LLP shall maintain books of accounts.
- A Statement of Accounts and Solvency (SAS) to be prepared within 6 months from each Financial Year
- Annual Return of LLP must be filed with Registrar of LLP
- Audit of the accounts is required only if the contribution exceeds Rs. 25 lakhs or annual turnover exceeds Rs.40 lakhs.
- Tax issues of LLP addressed under the Income Tax Act 1961 separately
- Income-tax - 30% of total income with education cess of 3%. Effective tax rate is 30.90%. No Surcharge would be levied on LLPs taxable amount.
- Multi Disciplinary Professional LLP can be formed
- Indian Partnership Act, 1932 shall not apply to LLP.
- Applicability of Companies Act, 1956 will be directed by Central Government by notification in Official Gazette.
- Concept of Whistle Blower has been introduced
- The Cabinet Committee of Economic Affairs (CCEA) approved Foreign Direct Investment (FDI) in LLP on 11<sup>th</sup> May, 2011
- Foreign Investment is allowed in LLP only with Foreign Investment Promotion Board (FIPB) Approval. Under FDI Policy, Foreign Investment in Limited Liability Partnership is allowed with specific approval of the Government. However, FDI in LLPs is allowed only under those sectors where 100% FDI is otherwise allowed under automatic route and subject to other specified conditions.
- The followings are some conditions with respect to FDI in LLP's.
  - LLPs with FDI will not be eligible to make any downstream investments.
  - Foreign Capital participation in LLPs will be allowed only by way of cash consideration.
  - Investment in LLPs by Foreign Institutional Investors (FIIs) and Foreign Venture Capital Investors (FVCIs) will not be permitted.
  - LLP's are not allowed to raise foreign currency loans

**FEATURES OF LIMITED LIABILITY PARTNERSHIP**

The LLP is an alternative corporate business vehicle that gives the benefits of limited liability and allows its members the flexibility of organizing their internal structure as a partnership based on an agreement.

The features of the Limited Liability Partnership form of business organization may be listed as follows:

1. The LLP shall be a body corporate and a legal entity separate from its partners.
2. Any two or more persons, associated for 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 a Limited Liability Partnership. Every registered LLP shall be assigned a LLP identification number (LLPIN) in one consecutive series.
3. The LLP will have perpetual succession.
4. The mutual rights and duties of partners of an LLP inter se and those of the LLP and its partners shall be governed by an agreement between partners or between the LLP and the partners subject to the provisions of the LLP Act 2008. The Act provides flexibility to devise the agreement as per their choice. However in the absence of any such agreement, the mutual rights and duties shall be governed by the provisions of the First Schedule to the LLP Act 2008.
5. The LLP will be a separate legal entity, liable to the full extent of its assets, with the liability of the partners being limited to their agreed contribution in the LLP which may be of tangible or intangible nature or both tangible and intangible in nature.
6. No partner would be liable on account of the independent or un-authorized actions of other partners or their misconduct.
7. The liabilities of the LLP and partners who are found to have 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 LLP;
8. 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.



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9. The duties and obligations of Designated Partners shall be as provided in the law;
10. No Restriction as to the maximum number of partners in a LLP.
11. The LLP shall be under an obligation to maintain annual accounts reflecting true and fair view of its state of affairs. A statement of accounts and solvency shall be filed by every LLP with the Registrar every year.
12. The accounts of LLPs shall also be audited, subject to any class of LLPs being exempted from this requirement by the Central Government;
13. The Central Government has powers to investigate the affairs of an LLP, if required, by appointment of competent Inspector for the purpose;
14. The compromise or arrangement including merger and amalgamation of LLPs shall be in accordance with the provisions of the LLP Act 2008;
15. A firm, private company or an unlisted public company is allowed to be converted into LLP in accordance with the provisions of the Act. Upon such conversion, on and from the date of certificate of registration issued by the Registrar in this regard, the effects of the conversion shall be such as are specified in the LLP Act.
16. On and from the date of registration specified in the certificate of registration, all tangible (moveable or immovable) and intangible property vested in the firm or the company, all assets, interests, rights, privileges, liabilities, obligations relating to the firm or the company, and the whole of the undertaking of the firm or the company, shall be transferred to and shall vest in the LLP without further assurance, act or deed and the firm or the company, shall be deemed to be dissolved and removed from the records of the Registrar of Firms or Registrar of Companies, as the case may be;
17. The winding up of the LLP may be either voluntary or by the Tribunal to be established under the Companies Act, 1956. Till the Tribunal is established, the power in this regard has been given to the High Court;
18. The LLP Act 2008 confers powers on the Central Government to apply provisions of the Companies Act, 1956 as appropriate, by notification with such changes or modifications as deemed necessary. However, such notifications shall be laid in draft before each House of Parliament for a total period of 30 days and shall be subject to any modification as may be approved by both Houses;

19. Taxation for LLP notified on 10.07.2009.
20. The Indian Partnership Act, 1932 shall not be applicable to LLPs.

### **THE LIMITED LIABILITY PARTNERSHIP ACT, 2008**

The Central Government has exclusive power to make law with respect to Incorporation, regulation and winding up of Limited Liability Partnership under Entry 44 of List I of the Seventh Schedule to the Constitution of India.

Limited Liability Partnerships (LLP) are governed by the Limited Liability Partnership Act, 2008 (LLP Act 2008) which came into effect by way of notification dated 31st March 2009.

Various committees and Expert Groups have, from time to time, recommended introduction of LLP legislation in India. Taking into account the recommendations of the various Committees, The Limited Liability Partnership Bill 2006 (LLP bill 2006) was introduced in the Rajya Sabha on 15th December 2006. The Bill had 14 chapters containing 73 Sections and 4 schedules. The LLP Bill 2006 was later referred to the Department Related Parliamentary Standing Committee on Finance for examination and report. The Committee submitted its recommendations in its report to both Houses of Parliament on 27th November, 2007. The LLP Bill 2006 was then withdrawn. The LLP Bill, 2008 which had taken in view the recommendations made by the Standing Committee and other relevant inputs was introduced in the Rajya Sabha on 21.10.2008 and in the Lok Sabha on 12.12.2008 and received the President's assent on 07.01.2009. Parliament enacted the Limited Liability Partnership Act 2008 and notified it on 31.03.2009. The Act extends to the whole of India. The LLP Act 2008 has 14 chapters containing 81 Sections and 4 schedules.

Since different dates may be appointed for coming into force of different provisions of the Act, some sections of the Act were made applicable on 31.3.2009 itself, and the provisions on conversion of firms/companies to LLP were made applicable w.e.f 31.5.2009. Except Sections 2 (1) (c) and (u), 51, 55-58, 63-65, 72 and 73 the Act came into force on 31<sup>st</sup> March 2009. Sections 55 - 58, Second, Third and Fourth Schedule came into force on 31<sup>st</sup> May 2009.

In order to bring out the Procedural aspects of the Limited Liability Partnership Act, 2008, and in exercise of the powers conferred by sub-sections (1) and (2) of section 79 of the Limited Liability Partnership Act, 2008 the Central Government through notification dated 1st April 2009 made the Limited Liability Partnership

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Rules, 2009. The LLP Rules are divided into 18 Chapters containing 41 Rules, with 31 Forms and 4 Annexures to the Rules. Accordingly, the forms to be filed under the Act are annexed to these Rules and the fees to be paid in pursuance of various provisions of the Act are laid down in Annexure A to the Rules. Rules 1-31, 34-37 and 41 came into force on 1<sup>st</sup> April 2009. Rules 32 and 33, and 38 to 40 came into force on 31<sup>st</sup> May 2009.

The LLP (Winding Up & Dissolution) Rules 2010, were notified on 30th March, 2010. However, the Ministry of Corporate Affairs (MCA) notified new Limited Liability Partnership (Winding Up and Dissolution) Rules, 2012 on 10th July 2012 in supersession of earlier rules notified, namely, Limited Liability Partnership (Winding Up and Dissolution) Rules, 2010.

Limited Liability Partnership is managed as per the LLP Agreement, however in the absence of such agreement the LLP would be governed by the framework provided in Schedule 1 of Limited Liability Partnership Act, 2008 which describes the matters relating to mutual rights and duties of partners of the LLP and of the limited liability partnership and its partners.

The LLP Act 2008 empowers the Central Government under section 67 to apply the provisions of the Companies Act 1956 or any other Act with appropriate exception, modifications and adaptation to LLP.

The Indian Partnership Act, 1932 - the existing partnership law is specifically excluded from application to LLP and should not be looked upon as applying in any form of default basis.

The Ministry of Corporate Affairs (MCA) and the Registrar of Companies (ROC) are the administrative bodies to regulate the LLP Act 2008. The Ministry is primarily concerned with the administration of the Limited Liability Partnership Act 2008 and the rules framed there under.

### **NEW CONCEPTS IN LLP**

#### **The new concepts in the LLP form of business are as follows**

- **Designated Partner**
  - Is a concept similar to officer in default
  - Are like Directors with executive powers
  - May be Partners Sharing Profit
  - Partners if not designated will not be liable for any deeds of criminal
  - offence committed by Designated Partners

- **Contribution**

- May not be capital , but capital is contribution
- Is similar to guarantee
- Need not be the basis for voting/ control
- Need not be the basis for profit sharing

- **LLP Agreement**

- Profit Sharing Pattern/ Voting/ Contribution may not be related
- Powers of DP and Partners to be specified
- Decision making process to be defined
- Exit mechanism / dispute resolution

## **PARTNERS**

"Partner", in relation to a limited liability partnership, means any person who has been admitted as a partner in the limited liability partnership in accordance with the limited liability partnership agreement [Section 2(1) (q) of the Limited Liability Partnership Act, 2008]

An individual or a body corporate may become a Partner in a Limited Liability Partnership. [Section 5 of the Limited Liability Partnership Act, 2008]

Proviso to Section 5 specifies the disqualifications that will prevent an individual from becoming a Partner. Accordingly, 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.

The LLP Act, 2008 has not specified the qualifications to be a partner but has specified the above three disqualifications in respect of an individual. Minimum number of partners in the Limited Liability Partnership is stipulated as two by Section 6 (1) of Limited Liability Partnership Act 2008. In case the minimum number of partners is reduced below two and the LLP carries on

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Business for more than 6 months, then such sole partner with whom business is carried on, if he has knowledge of such fact, shall be personally liable for obligations of LLP during that period [Section 6(2)].

### **DESIGNATED PARTNERS**

"Designated partner" means any partner designated as such pursuant to section 7 of the said Act [Section 2(1) (j) of the LLP Act 2008].

Every LLP should have at least 2 designated partners and at least 1 should be resident in India [Section 7(1) of the LLP Act 2008]. The term "resident in India" means a person who has stayed in India for a period of not less than one hundred and eighty-two days during the immediately preceding one year.

The Incorporation document of the LLP can specify the names of the designated partners and if so, they will become designated partners [Section 7 (2) of the Act]. The Incorporation Document can also state that every person who from time to time is Partner will be Designated Partner.

The Individual should have given his consent to act as a designated partner in the form and manner prescribed (format given in Form 4) [Section 7(3) of the Act].

Every LLP has to file Particulars of every partner who has consented to act as such (in Form 4 of LLP Rules 2009) with the Registrar within thirty days of his appointment [Section 7(4)]

Section 7(5) lays down that an individual eligible to be a designated partner shall satisfy such conditions and requirements as may be prescribed. Rule 9 of the LLP Rules 2009 lays down the disqualifications for appointed as designated partner. As per section 7(6) of the LLP Act 2008, every designated partner of a limited liability partnership will have to obtain a Designate Partner Identification Number (DPIN) from the Central Government.

Every individual, who is intending to be appointed as designated partner of a limited liability partnership, should make an application electronically in Form DIN-1 under Companies (Director Identification Number) Rules, 2006 to the Central Government for obtaining DPIN under Limited Liability Partnership Act, 2008 and such DIN will be sufficient for being appointed as designated partner under Limited Liability Partnership Act, 2008. If a person holds both DIN and DPIN, his DPIN will stand cancelled and DIN will be sufficient for being appointed as Designated Partner under Limited Liability Partnership Act, 2008

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The designated partner shall be answerable for doing of all acts, matters & things as are required to be done by LLP pursuant to the Act and will be responsible for filing of document, return, statement and the like report pursuant to the provisions of this Act and as may be specified in the LLP agreement. The designated partners are liable to all penalties imposed on the LLP for any contravention of the specified provisions.

Notice has to be filed with the Registrar when changes occur in the partnership and/or designated partnership of a LLP within 30 days of the change.

### **LIMITATION OF LIABILITY**

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 LLP

The LLP is liable if a partner of the LLP is liable to any person as a result of the wrongful act or omission on his part in the course of the business of the LLP or with its authority. The LLP will have unlimited liability when any activity is carried out with intent to defraud creditors of the limited liability partnership or any other person, or for any fraudulent purpose, unless it is proved that such acts were without the knowledge or authority of the LLP.

An obligation of the LLP whether arising in contract or otherwise, is solely the obligation of LLP. The liabilities of the limited liability partnership shall be met out of the property of the limited liability partnership.

Every partner is an agent of LLP and not of other partners. Partner is not personally liable and the liabilities of LLP will be met out of the property of LLP. Partner is personally liable for his own wrongful act or omission and not that of other partners.

### **FORMING A LIMITED LIABILITY PARTNERSHIP**

The process for incorporating a LLP is as follows:

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- Decide on the Partners and the Designated Partners
- Obtain Designated Partner Identification Number (DPIN) and a Digital Signature Certificate.
- Decide on the name of the LLP and check whether it is available.
- Draft the LLP agreement
- File the LLP Agreement, incorporation documents and obtain the Certificate of Incorporation.
- The Registrar of LLP is the authority having jurisdiction over the incorporation

### **A Limited Liability Partnership may be incorporated as per the procedure explained below:**

#### **1. User Registration**

- To file an eForm or to avail any paid service on LLP portal; you are first required to register yourself as a user in the relevant user category, such as registered and business user.
- For e-Filing on MCA21 your Computer must have the following components installed:
  - Windows 2000 / Windows XP / Windows Vista / Windows 7
- All users using below mentioned services on MCA21 are required to have Windows XP ( SP3 )/ Windows Vista/Windows 7 and JDK 1.6 updated version 30 installed on their machine -
  - Any user logging on MCA21 using a DSC
  - Any existing user registering/ updating a DSC
  - Any new user registering using a DSC
- For registration, users have been categorised into following two categories:
  - a) Registered User
  - b) Business User - these are further categorised into following roles
    - Designated partner
    - Practicing Professional
    - Authorised representative of a Foreign LLP
- Authentication will be password based for a registered user and in case of business user; it will be DSC based authentication.
- Users who are already registered in the MCA21 system are not required to register again. Their existing login credentials shall be applicable for availing services for LLPs also.

**2. Obtain Designated Partners Identification Number (DPIN).**

- All designated partners of the proposed LLP shall obtain “Designated Partner Identification Number (DPIN)”
- Director Identification Number: Every Designated Partner is required to obtain a DIN from the Central Government. If a person already has a DIN, the same can be used for forming LLP.
- The DIN can be applied online at (<http://www.mca.gov.in/MCA21/Din.html>).
- To avoid the duplicity, MCA has decided to issue only one identification number to individuals for both purposes, i.e. for becoming Director and Designated Partner. Hence, with effect from 9 July 2011, the DIN with DPIN stand integrated.
- With effect from 9<sup>th</sup> July 2011, no fresh DPIN will be issued. Any person who desires to become a Designated Partner in a LLP has to obtain DIN by filing e-form DIN-1
- If a person has been allotted DIN, the said DIN shall also be used as DPIN for all purposes under LLP Act 2008
- If a person has been allotted DPIN, the said DPIN shall also be used as DIN for all purposes under LLP Act 2008
- If a person has been allotted both DIN and DPIN, his DPIN will stand cancelled and his DIN will be used as DIN as well as DPIN for all purposes under LLP Act 2008
- As per Ministry of Corporate Affairs (MCA) circular No. 32/2011 dated 31.5.2011, Income Tax Permanent Account Number (PAN) has been made mandatory for obtaining DIN for Indian Nationals. All existing DIN holders, who have not furnished their PAN at the time of obtaining DIN, are required to furnish their PAN to the MCA by filing e-form DIN-4 by 30.9.2011. The time limit has been extended from time to time and as per Circular No.4/2012 dated 9.3.2012 is upto 30.4.2012
- Copy of passport is mandatory as an id proof in the case of foreign nationals, for obtaining DIN

As per the revised procedure for DIN Allotment, any person intending to apply for DIN shall have to make an application in eForm DIN 1 and should follow the following procedure:

1. eForm DIN-1 has to follow the offline eFiling process.



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2. Attach the photograph and scanned copy of supporting documents i.e. proof of identity, and proof of residence as per the guidelines. Physical documents are not required to submit at DIN cell.

3. Along with the supporting documents, verification by the applicant for applying for allotment of Director Identification Number (DIN) shall also be attached. This shall contain the Name, Father's name, date of birth and text of declaration and physical signature of the applicant.

4. The eForm shall have to be digitally signed and shall be uploaded on MCA21 portal.

5. Upon upload, Pay the fees for DIN1 eForm. Only electronic payment of the fees shall be allowed (I.e. Netbanking / Credit Card). No challan payment will be accepted under revised procedure of DIN allotment.

The applicant is required to get himself/herself registered on the MCA21 Portal to obtain login id, which is necessary for payment of the fees. After obtaining the login-id, Login to the MCA21 portal and click on 'eForm upload' link available under the 'eForms' tab for uploading the eForm DIN 1. eForm DIN-1 will be processed only after the DIN application fee is paid.

6. Upon upload and successful payment,

In case Form DIN 1 is signed by a practicing professional or secretary (who is a member of ICSI) in whole time employment of the existing company in which applicant is to be associated and details have not been identified as potential duplicate, Approved DIN shall be generated and if the details have been identified as potential duplicate, Provisional DIN shall be generated. A suitable informational message and an email shall be provided to the user that the DIN shall be approved after due verification by the DIN cell/ RD(NR).

This shall also be applicable to potential duplicate cases identified in Form DIN4.

7. Processing of e Form DIN 1

In case, DIN 1 gets certified by the professional (i.e. CA(in whole time practice)/ CS(in whole time practice)/ CWA (in whole time practice)/secretary (who is member of ICSI) in whole time employment of the existing company in which applicant is to be associated), the DIN will be approved by the system immediately online (in case it is not potential duplicate).

8. Intimate approved DIN to your Companies

On approval of DIN, intimate your DIN to all the company (ies) (within a period of 30 days from the date of approval) in which you are a Director, in form DIN-2. Form DIN-2 can be downloaded and printed from the 'DIN' link on the homepage of MCA portal.

9. Company to intimate your DIN to ROC

After the Director has intimated the DIN allotted to the company(ies). The Company(ies) is/are then required to intimate the DINs of its directors to the ROC in Form DIN-3 within a period of seven days of receiving form DIN-2. (Filing of DIN-3 is applicable only in cases, where the date of appointment of director(s) in such company(ies), is prior to September 1 , 2007)

10. Post-approval changes in particulars of DIN-1

If there is any change in the particulars submitted in form DIN-1, applicant can submit e-form DIN-4 online. For instance in the event of change of address of a director, he/ she is required to intimate this change by submitting eform DIN-4 along with the required attested documents.

**3. Digital Signature Certificate**

- Digital Signature Certificates (DSC) are the digital equivalent (that is electronic format) of physical or paper certificates. Like physical documents are signed manually, electronic documents, for example e-forms are required to be signed digitally using a Digital Signature Certificate.
- All the forms like eForm 1, eForm 2, eForm 3 etc which are required for the purpose of incorporating the LLP are filed electronically through the medium of Internet, it is not possible to sign them manually. Therefore, for the purpose of signing these forms, the Designated Partner of the proposed LLP needs to obtain a Digital Signature Certificate (DSC) from government recognized DSA's. The signatures shall also be required for signing and filing of all relevant forms and documents to be filed, annually or event based after incorporation of the LLP, asking for approvals or as intimation.

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- Likewise the manual signatures, digital signature certificates are individual specific and no partner needs to obtain more than one.
- Partner/Designated partner of LLP/proposed LLP, whose signatures are to be affixed on the e-forms has to obtain class 2 or class 3 Digital Signature Certificate (DSC) from any authorized certifying agency. There are a total of eight Certification Agencies authorised by the CCA to issue the Digital Signature Certificates (DSCs), viz:
  - a. Tata Consultancy Services (TCS)
  - b. National Informatics Center (NIC)
  - c. IDRBT Certifying Authority
  - d. SafeScript CA Services, Sify Communications Ltd.
  - e. (n) Code Solutions CA
  - f. MTNL Trust Line
  - g. Customs & Central Excise
  - h. E-MUDHRA

### **4. Reservation of name**

- Log on to the LLP portal.
- Open Form-1 for reservation of name and fill in the details. Select name of the proposed LLP (upto 6 choices can be indicated).
- Any partner or designated partner in the proposed LLP may submit Form-1.
- Append digital signatures and submit the e-form
- Pay the necessary fee by credit card (master/visa).
- Free name search facility (of existing companies / LLPs) is available on MCA portal (hyper link available on LLP portal).The system will provide the list of similar/closely resembling names of existing companies/LLPs based on the search criteria filled up.
- Details of minimum two designated partners of the proposed LLP, one of them must be a resident of India, is required to be filled in the application for reservation of name. Only individuals or nominees on behalf of the bodies corporate as partners can act as designated partners.
- Check status of your application by logging on the portal.
- According to Rule 18(5) of the LLP Rules, 2009, the process time for approval of name by the registrar shall be ordinarily 7 days from the date of receipt of application.

### **5. Incorporation of LLP**

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- Once the name is reserved by the Registrar, it is available for registration of LLP for three months.
- Log on to the portal and fill up Form-2 "Incorporation Document and Statement".
- Pay the prescribed registration fee as per the slab given in Annexure A of the LLP Rules, 2009, based on the total monetary value of contribution of partners in the proposed LLP.
- Subscriber's Statement in the e-form 2 is to be digitally signed by a person named in the incorporation document as a designated partner having permanent DPIN and also to be digitally signed by an advocate/company secretary/chartered accountant/cost accountant in practice and engaged in the formation of LLP.
- On submission of complete documents the Registrar after satisfying himself about compliance with relevant provisions of the LLP Act will register the LLP, maximum within 14 days of filing of Form-2 and will issue a certificate of incorporation in Form-16.
- Check status of your application by logging on to the portal

### **6. Filing of LLP agreement (Form-3) and Partners' details (Form-4)**

- Form 3 (Information with regard to LLP agreement and changes, if any made therein) and Form-4 (Notice of Appointment of Partner/Designate Partner, his consent etc.) may be filed with the prescribed fee simultaneously at the time of filing Form-2 or within 30 days of the date of incorporation or within 30 days of such subsequent changes.

### **Integration of LLP system with MCA-21**

The Ministry is in process of integration of LLP system into MCA-21 in the month of June 2012 by allowing filing & approval of LLP forms at MCA-21 website ([www.mca.gov.in](http://www.mca.gov.in)) for better e-governance facility for stakeholders, by making necessary changes in e-forms. Post integration, old e-forms of the existing LLP system lying in "Pending User Clarification" (PUCL) status cannot be re opened. LLPs and designated partners are also advised to reopen/ resubmit the LLP form, if any lying in "Pending User Clarification" (PUCL) / Under Resubmission (RESUB) mode by 21-05-2012 after complying with the requirements failing which the pending forms will be liable for rejection or will be marked as invalid and LLP shall be required to file of fresh e-forms with fees & additional fees.

### **FORMS AND FEES**

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Every LLP shall use the forms annexed to the LLP Rules 2009 for the purpose of the LLP Act 2008, and shall specify therein its Limited Liability Partnership Identification Number (LLPIN). ROC assigns a Limited Liability Partnership Identification Number (LLPIN) for every LLP which is registered with the said Registrar, similar to a Company.

The electronic form shall be authenticated by authorized signatories using digital signatures. "Digital signature" means authentication of any electronic record by a subscriber by means of an electronic method or procedure

The fees payable in pursuance of the various provisions of the Act and the rules shall be as mentioned in Annexure 'A' to the LLP Rules 2009, and shall be paid into the Public Account of India.

However, where the amount involved does not exceed 50/-, the fees payable to the Registrar may be paid also through postal orders or through bank drafts payable at and/or drawn on post offices or banks, as the case may be, located at the same city or town where the office of the Registrar is situated. Such fee shall not be deemed to have been paid unless and until the relevant postal orders or drafts are cashed and the amount credited.

Where application is filed through electronic media or through any other computer readable media, the user may choose any one of the following payment options namely,

- (i) Credit Card; or
- (ii) Internet Banking; or
- (iii) Remittance at the Bank Counter; or
- (iv) any other mode as approved by the Central Government.

### **E-filing of Forms**

In order to carry out e-filing there is a facility to download the eform and fill it in an offline mode. Every form has the facility to pre-fill the data available in LLP system. Once the e-form is filled you would need to validate the e-form using Pre-scrutiny button. You would then have to affix the relevant digital signatures and save the form. You would need to be connected to the internet to carry out the pre-fill and pre-scrutiny functions. The step by step process is given below. The filled up e-form as per relevant instruction kit needs to be uploaded on the LLP portal. On successful upload, the Service request number would be generated and you would be directed to make payment of the statutory fees.

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Once the payment has been made the status of your payment and filing status can be tracked on the LLP portal by using the 'Track Your Payment Status' and 'Track Your Transaction Status' link respectively.

The following steps given below are the procedure to do eFiling:

1. Select a category to download an eForm from the LLP portal (with or without the instruction kit)
2. At any time, you can read the related instruction kit to familiarize yourself with the procedures (you can download the instruction kit with eform or view it under Help menu).
3. You have to fill the downloaded eForm.
4. You have to attach the necessary documents as attachments.
5. You can use the Prefill button in eForm to populate the grayed out portion by connecting to the Internet.
6. The applicant or a representative of the applicant needs to sign the document using a digital signature.
7. You need to click the Check Form button available in the eForm. System will check the mandatory fields, mandatory attachment(s) and digital signature(s).
8. You need to upload the eForm for pre-scrutiny. The pre-scrutiny service is available under the Services tab or under the eForms tab by clicking the Upload eForm button. The system will verify (pre-scrutinize) the documents. In case of any inadequacies, the user will be asked to rectify the mistakes before getting the document ready for execution (signature).
9. The system will calculate the fee, including late payment fees based on the due date of filing, if applicable.
10. Payments will have to be made through appropriate mechanisms - electronic (credit card, Internet banking, NEFT, Pay Later) or traditional means (at the bank counter through challan).
  - (a) Electronic payments can be made at the Virtual Front Office (VFO) or at PFO
  - (b) If the user selects the traditional payment option, the system will generate 3 copies of pre-filled challan in the prescribed format. Traditional payments through cash, cheques can be done at the designated network of banks using the system generated challan. There will be five banks with estimated 200 branches authorized for accepting challan payments.
11. The payment will be exclusively confirmed for all online (Internet) payment transactions using payment gateways.
12. Acceptance or rejection of any transaction will be explicitly communicated to the applicant (including facility to print a receipt for successful transactions).
13. LLP will provide a unique transaction number, the Service Request Number (SRN) which can be used by the applicant for enquiring the status pertaining to that transaction.
14. Filing will be complete only when the necessary payments are made.
15. In case of a rejection, helpful remedial tips will be provided to the applicant.

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16. The applicants will be provided an acknowledgement through e-mail or alternatively they can check the LLP portal.

### **Annual E-Filing**

LLP under the LLP Act 2008, are required to file the following Forms with the Registrar every year:

1. Statement of Account & Solvency: e- Form 8
2. Annual Return: e-Form 11

LLPs can do e-Filing in the following way: - The Designated partner (DP) (in case of LLP) or authorised representative (AR) (in case of Foreign Limited Liability Partnership (FLLP)) can upload the e-Forms on the LLP portal (after registering oneself as a user of the portal) at his convenience from his office/ home. This is the most convenient way of e-Filing.

### **Approval Related Filing**

Following forms required approval related filing:

- Form 22 ( Notice of intimation of Order of Court/ Tribunal/CLB/ Central Government to the Registrar) is required to be filed to inform Registrar about the order received by the LLP/ Foreign LLP.
- Form 23 (Application for direction to Limited Liability Partnership (LLP) to change its name) is required to be filed to registrar for direction to subsequently incorporated LLP to change its name.
- Form 25 is required to be filed to Registrar to reserve the name of foreign LLP or foreign company for a period of three years.
- Form 31 is required to be made to the Registrar for compounding of an offence under the Act .

### **Fees**

(As per Annexure A to LLP Rules 2009)

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<b>DOCUMENTS</b>	<b>Amount of Contribution</b>	<b>Registration</b>	<b>FEES Filing</b>
An application for reservation of name u/s 16			200
An application for direction to change the name of u/s 18	Up to 1 lakh	500	10000 50
An application for reservation of name u/Rule 18(3)	Above 1 up to 5 lakh	2000	10000 100
Application for renewal of name u/Rule 18(3)	Above 5 up to 10 lakh	4000	5000
Application for obtaining DPIN u/Rule 10(5)	Exceeds 10 lakh	5000	100 200

<b>DOCUMENTS</b>	<b>FEES</b>
For inspection of documents	50
Certified Copy or extract of any document	5 per page

**List of Forms to be filed by LLP**

<b>Form</b>	<b>Description</b>
Form 1	Application for reservation or change of name
Form 2	Incorporation document and subscriber's statement
Form 2A	Details in respect of designated partners and partner of LLP
Form 3	Information with regard to LLP agreement and changes, if any, made therein
Form 4	Notice of appointment, cessation, change in name/address/designation of a designated partner or partner and consent to become a partner/designated partner
Form 4A	Notice of appointment, cessation, change in particulars of partners
Form 5	Notice for change of name
Form 8	Statement of account & insolvency
Form 11	Annual return of LLP
Form 12	Form for intimating other address for service of documents
Form 15	Notice for change of place of registered office
Form 17	Application and statement for conversion of a firm into LLP



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Form 18	Application & statement for conversion of private company/ unlisted public company into LLP
Form 22	Notice of intimation of order of court/ tribunal/ CLB/ central Govt to the Registrar
Form 23	Application for direction to LLP to change its name to the Registrar
Form 24	Application to the Registrar for striking off name
Form 25	Application for reservation/ renewal of name by a Foreign LLP or foreign company
Form 27	Form for registration of particulars by foreign LLP
Form 28	Return of alteration in the incorporation document
Form 29	Notice of alteration
Form 31	Application for compounding of an offence
Form 32	Form for filing addendum for rectification of defects or incompleteness
Form DIN 1	Application for allotment of Director Identification Number
Form DIN 4	Intimation of change in particulars of Director to be given to the Central Govt.

### **LIMITED LIABILITY PARTNERSHIP AGREEMENT**

Partners in a limited liability partnership are not obliged to enter into a formal LLP agreement. In practice, however, they will almost certainly get together to decide on the structure and regulation of all aspects of their limited liability partnership, in just the same way as prospective partners in a traditional partnership. The agreement they make is then binding on them after the limited liability partnership has been properly registered.

According to section 2(1)(o) of the LLP Act 2008, Limited Liability Partnership Agreement means any written Agreement between the partners of the LLP, or between the LLP and its Partners, which determines the mutual rights and duties of the partners and their rights and duties in relation to the LLP.

It is not mandatory by law to enter into a formal LLP agreement, but it should be done as it avoids unnecessary disputes in the future.

Where no LLP agreement has been executed between the partners of LLP or the agreement is silent on certain issues, the provisions of the First Schedule to the LLP Act 2008 shall apply.

LLP Agreement is the most important document and execution of LLP agreement and any changes made therein should be filed with the Registrar in Form 3 annexed to the LLP Rules 2009 within 30 days from the date of

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incorporation of LLP / date of change made in LLP agreement, as the case may be, along with the filing fee as per Annexure A of the LLP Rules 2009. [Section 23(2) of the LLP Act 2008 and Rule 21(1) of the LLP Rules 2009]

Form No. 3 mandatorily requires the following information :

- i) Name and address of LLP
- ii) Business to be carried on by LLP
- iii) Address of Registered office
- iv) Name of designated partners or mentioning of the fact whether all partners would be considered as designated partners, acts, matters and things required to be done by a designated partner. Powers in relation to acts, matters, or things which the designated partner or partners can exercise only with the consent of all the partners / requisite number of percentage of partners.
- v) Obligation of each partner to contribute money or property or other benefit or to perform services.
- vi) Partner's duties : (1) powers, duties and authority of each partner (2) mutual rights and duties of partners (3) mutual rights and duties of LLP and partners.
- vii) Restrictions if any, on the partner's authority
- viii) Management and administration of LLP -
  - List of acts matters or things which can be done only with the consent of all the partners,
  - Which can be done with the consent of majority of the partners,
  - Can be done only with the consent of number of requisite partners,
  - Manner, if any, in which the consent of the partners to be obtained,
  - Procedure for calling, holding and conducting meetings (where the decisions are to be made at the meetings of the partners).
- ix) Whether LLP has a common seal, and if it has, then name of the person having power to affix it.
- x) Clauses relating to admission, retirement, cessation, expulsion and resignation of partners.
- xi) Obligations, rights, entitlements of a partner on retirement, cessation, expulsion and resignation of partners.
- xii) Clauses, if any, relating to resolution of dispute between the partners or partners and LLP
- xiii) Duration of LLP, if any
- xiv) Clauses in relation to voluntary winding up
- xv) Any other information (This is optional)

The LLP Agreement is important for the following reasons:

1. The effect of LLP Agreement is that it defines the rights, duties and liabilities between partners inter se and of partners with the LLP, and helps in avoiding any disputes

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2. Execution of a LLP agreement provides for efficient running of the company
3. Among other things, the LLP Agreement defines the form of contribution and liability for contribution of the partners.
4. A written LLP agreement will assist in assessing the profitability of partners for taxation purposes under the Income Tax Act 1961.

### **ACCOUNTS AND AUDIT**

The provisions regarding Financial Disclosures are contained in Chapter VII of the Limited Liability Partnership Act, 2008 and Chapter VII and Chapter VIII of the Limited Liability Partnership Rules 2009

The provisions are summarized hereunder

#### **A) Maintenance of proper books of accounts**

The limited liability partnership shall maintain such proper books of accounts 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(1) of the LLP Act 2008)

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.

The accounting records shall in particular contain –

- (a) entries from day to day 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, and
- (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

(d) Any other details which the partner may decide

**Preservation of Books of Account**

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.

**Destruction of old records**

- (1) Every LLP shall preserve the documents permanently as specified in Annexure 'B' to the LLP Rules 2009
- (2) Subject to the previous order of the Registrar, the records in his office may be destroyed after the expiration of the period of their preservation as specified below:-

(a) Records to be preserved for 21 years:

All papers, registers, refund orders and correspondence relating to the limited liability partnership liquidation accounts.

(b) Records to be preserved for 5 years:

- (i) Copies of Government orders relating to limited liability partnership;
- (ii) Registered documents of limited liability partnership which have been fully wound up and finally dissolved together with correspondence relating to such limited liability partnership;
- (iii) Papers relating to legal proceedings from the date of disposal of the case and appeal, if any;
- (iv) Copies of statistical returns furnished to Government;
- (v) All correspondence including correspondence relating to scrutiny of accounts, annual returns, prosecutions, reports to the Central Government and the Tribunal and the correspondence relating to complaints;

It is to be noted that in case of prosecution matter, the date is to be recorded from the date of disposal of the case and appeal, if any.

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- (3) The registered documents specified in Annexure 'C' to the said rules relating to any limited liability partnership in operation shall be preserved for the period indicated against them in the said Annexure.
- (4) Registered documents of foreign limited liability partnerships which cease to have any place of business in Indian shall be destroyed after expiry of three years from the date such limited liability partnerships ceases to have any place of business in India in accordance with the procedure laid down in rule 5.
- (5) The Registrar of Companies, Delhi shall intimate to the Registrar concerned his intention to destroy the documents and other records of a particular limited liability partnership by a certain date, two weeks in advance thereof and the Registrar concerned shall, on receipt of such intimation, destroy the said documents at the same time and communicate to the Registrar of Companies, Delhi, the fact of such destruction.
- (6) Records to be preserved for three years:-
  - (a) All books, records and papers, other than those specified in sub-rule (i), Sections (a) and (b) of sub-rule 2, sub-rule 3 and sub-rule 4.
  - (b) Routine correspondence regarding payment of fees, additional filing fees and correspondence about the return of documents;

No record in the office of the Registrar of Companies shall be destroyed without his previous order in writing in that behalf.

- (7) Record of documents destroyed to be maintained - The Registrar of Companies shall maintain a Register in two parts, in the form set out in the Annexure 'D' to these rules, wherein he shall enter brief particulars of the records destroyed and shall certify by his own hand writing therein the date and mode of destruction.

### Statement of Account and Solvency

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 34(2) of the LLP Act 2008)

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

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end of six months of the financial year to which the Statement of Account and Solvency relates.

The fees to be paid to the Registrar for filing the Statement of Account and Solvency shall be as mentioned in Annexure 'A' to the LLP Rules 2009.

### **Form of Statement of Account and Solvency**

The Statement of Account and Solvency in Form 8 is divided into 2 parts:

Part A: Statement of Solvency; and

Part B: Statement of Account

In Part A, the designated partners of LLP/ authorized representative in case of foreign LLP, solemnly affirm and declare the following matters:

i. that full inquiry into the affairs of the Limited Liability Partnership/Foreign Limited Liability Partnership has been made and on the basis of inquiry opinion has been formed that the LLP/ Foreign LLP is/is not able to pay its debts in full as they become due in the normal course of business.

ii. A Statement of the Assets and Liabilities as at----- and Income and Expenditure for the period ended on ----- being the latest practicable date before the making of this declaration, has been appended to the Form

iii. A Statement indicating creation of charges or modification or satisfaction thereof during the financial year, has been appended to the Form

iv. that the turnover does not exceed/exceeds 40 lakh or the contribution does not exceed/exceeds 25 lakh rupees. The partners/authorized representatives have taken proper care and responsibility for maintenance of adequate accounting records and preparation of accounts in accordance with the provisions of the LLP Act and the Rules made there under.

In Part B, the Statement of Assets and Liabilities and Statement of Income and Expenditure, is given in Tabular Form.

The Statement of Account and Solvency shall be signed on behalf of the limited liability partnership by its designated partners, 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.

The Statement of Account and Solvency of every foreign limited liability partnership shall be duly signed by the authorized representatives of the foreign LLP.

### **B) Annual return**

Every limited liability partnership shall be required to file an annual return in Form 11 with the Registrar within sixty days of closure of its financial year. (Section 35(1) of the LLP Act 2008)

The annual return of an LLP having turnover up to 5 crore rupees during the

corresponding financial year or contribution up to 50 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.

**Failure to file Annual Return:**

Any limited liability partnership which fails to file Annual Return in the prescribed manner along with fees shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees. Also in case of failure of LLP, the designated partner of such LLP shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees.

**C) Audit of Accounts**

The accounts of limited liability partnerships shall be audited in accordance with such rules as may be prescribed. However, the Central Government may, by notification in the Official Gazette, exempt any class or classes of limited liability partnerships from the requirements of audit. (Section 34(4) of the LLP Act 2008)

**Exemption from Audit**

A limited liability partnership whose turnover does not exceed, in any financial year, 40 lakh rupees, or whose contribution does not exceed 25 lakh rupees is exempted from getting its accounts audited.

However, if partners of such limited liability partnership decide to get the accounts of such LLP audited, the accounts shall be audited in accordance with the LLP Rules 2009.

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.

**Qualifications for Appointment as Auditor**

An auditor or auditors of a limited liability partnership shall be appointed for each financial year of the LLP for auditing its accounts.

A person shall not be qualified for appointment as an auditor of a limited

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liability partnership unless he is a Chartered Accountant in practice. Under section 2(1)(f) of the LLP Act 2008, "chartered accountant" means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 [38 of 1949] and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act.

### **Appointment of Auditor**

The provisions with respect to appointment of auditor are as follows:

1. The designated partners to convene meeting for appointment of the auditor/auditors and fixing their remuneration for holding of the office as such. The Designated partners/Partners and the LLP are responsible for filing information with the Registrar like changes in address of the registered office, change in particulars of partners or membership and other filings like annual returns, annual declaration of solvency etc.

### **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 the 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 LLP Rules 2009
  - d). to fill up the vacancy caused by removal of an auditor.
2. Where for any financial year, no auditor has been appointed by the Designated Partners; partners to the LLP shall appoint the auditors for such financial year.
3. Period for which the Auditor/ Auditors appointed shall hold office.  
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.
4. Where no auditor has been appointed, any auditor in office shall be deemed to be re-appointed, unless –
- a). the limited liability partnership agreement requires actual reappointment,
  - 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



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The notice given by the majority of partners referred to in (b) above:

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

### **Remuneration of Auditor**

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.

### **Removal of Auditor**

The partners may remove an auditor anytime from his office by following the procedure laid down in the LLP Agreement.

Where LLP Agreement is silent, auditor shall be removed from his office with the consent of all the partners of the LLP.

### **Resignation of Auditor**

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

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.

The notice given by auditor in case of resignation or unwillingness to be reappointed is not effective unless it is accompanied by the statement of the circumstances connected with his ceasing to hold office.

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.

### **Punishment for contravention**

Any limited liability partnership which fails to maintain the proper books of accounts and other records, prepare Statement of Account and Solvency, get its accounts audited; shall be punishable with fine which shall not be less than twenty-five thousand rupees but which 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 which may extend to one lakh rupees.

Any limited liability partnership which fails to file the Annual Return with the Registrar within the prescribed time and in the prescribed manner shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees.

If in any return, statement or other document required by or for the purposes of any of the provisions of the LLP Act 2008, any person makes a statement –

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- which is false in any material particular, knowing it to be false; or
- 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.

In case of default

1. in filing any return, account or other document or the giving of notice to Registrar of any matter; or
2. in complying with any request of the Registrar to amend or complete and resubmit any document or to submit a fresh document

The Registrar may apply to the Tribunal if the defaulter fails to make good the default within fourteen days after the service of a notice requiring it to be done.

On receipt of application, the Tribunal may make an order directing that person or if that person is a corporation any officer of the body corporate to make good the default within such time as is specified in the order.

Any such order may provide that all the costs of and incidental to the application shall be borne by that person or by any officer of the body corporate who is responsible for the default if that person is a body corporate.

This shall not limit the operation of any other provision of the LLP Act 2008, or any other law imposing penalties in respect of any default on that person or an officer of a body corporate if that person is a body corporate.

### **LLP can now act as Auditor**

Section 266(3)(a) of Companies Act, 1956 disqualifies a Body corporate from being appointed as statutory auditor. MCA, vide circular no: 30A/2011 dated 26.05.2011 has clarified the term Body corporate for the purposes of Section 266(3)(a) of Companies Act, 1956. By virtue of the circular LLPs of Chartered Accountants are detached from the definition of 'body corporate' for the limited purpose of Section 226(3)(a) of the Companies Act.

### **TAXATION OF LIMITED LIABILITY PARTNERSHIP**

The Finance (No.2) Act, 2009 had introduced the provisions regarding taxation aspect of the Limited Liability Partnership. Section 2(23) of the Income Tax Act had been amended by the Finance Act, 2009 to include 'LLP' & its 'Partners' under the Income Tax Act, 1961.

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According to the Act, tax treatment of LLPs is to be same as that of 'Partnership Firms'.

For the LLP to be assessed as "firm" under Income Tax Act, following criteria under Section 184 of the Income Tax Act, 1961 should be satisfied:

- There should be a written LLP Agreement.
- The individual shares of the partners are very clearly specified in the deed.
- A certified copy of LLP Agreement must accompany the return of income of the LLP of the previous year in which the partnership was formed.
- If during a previous year, a change takes place in the constitution of the LLP or in the profit sharing ratio of the partners, a certified copy of the revised LLP Agreement shall be submitted along with the return of income of the previous years in question.
- There should not be any failure on the part of the LLP while attending to notices given by the Income Tax Officer for completion of the assessment of the LLP.

As an LLP and a general partnership is being treated as equivalent (except for recovery purposes) in the Act, the conversion from a general partnership firm to an LLP will have no tax implications if the rights and obligations of the partners remain the same after conversion and if there is no transfer of any asset or liability after conversion. If there is a violation of these conditions, the provisions of section 45 shall apply.

A new Chapter XII-BA has been inserted in the Income-tax Act, 1961, vide Finance Act 2011 containing special provisions relating to certain LLP. However, the said provisions shall have effect only on LLPs claiming deduction under Chapter VI-A (C), that is, income based deductions or under Section 10AA (deduction available to SEZ units) and not to all LLPs in general.

The new Chapter has been made operative from 1.4.2012 and will, accordingly, apply in relation to the assessment year 2012-2013 and subsequent years. Hence, there will be no Alternate Minimum Tax (AMT) levy in the assessment year 2011-2012.

### **Key Tax Provisions in respect of LLP**

- LLP will be treated as Partnership firms for the purpose of Income Tax and will be taxed like a partnership firm.
- Accordingly, the income of the LLP will be taxed in the hands of the LLP and the amount disbursed to the partner as profit (i.e. partner's share of

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total income) shall be exempt from tax in his hands, as in the case of partnership firm under section 10(2A) of the Act.

- Tax Rate = 30% flat tax rate + 3% Education Cess
- No surcharge will be levied on income tax.
- Alternate Minimum Tax is applicable as per Finance Act, 2011.
- A LLP will be liable to Alternate Minimum Tax (ATM) [in line with Minimum Alternate Tax (MAT) in case of companies], @ 19.06% (i.e 18.5% + 3% education cess) of the adjusted total income where the normal income tax payable is less than the AMT payable. The 'adjusted total income' would be the total income before giving effect to the AMT provisions as increased by certain deductions claimed in computing the total income. The tax base for computation of AMT in LLP is thus different from that of computation of MAT in case of companies where it is book profit.
- A tax credit will be allowed for AMT paid against tax payable on normal income. The tax credit may be carried forward up to 10 years as in the case of companies
- No Dividend Distribution Tax on distribution of profits to partners
- Remuneration and Interest on Capital paid to partners will be taxable in partner's hands as "Income from Business and Profession" to the extent these have been allowed as deduction in LLP's hands
- Remuneration to working partners allowed as deduction subject to compliance with the provisions of section 40 (b) and section 184
- Interest on capital can be paid to the partners of the LLP. It shall be allowable as a deductible expense on the same lines as is allowed in the case of the partnership firm under section 36 (1) (iii) read with section 40 (b) and section 184
- No taxable capital gain on conversion of general partnership firm into LLP [Explanatory Memorandum to the Finance (No. 2) Act 2009]
- Conversion of private companies /unlisted public companies into LLP's are not expressly exempted from capital gains taxation by the Act
- Designated Partners will be liable to sign and file the Income Tax return.
- In case of liquidation of LLP, the liability for payment of tax of every partner will be joint and several unless the partner proves that the non-recovery cannot be attributed to any gross negligence, misfeasance or breach of the duty on his part.
- LLPs shall not be liable to Wealth Tax
- New Chapter XII-BA ('Special Provisions Relating to Certain Limited Liability Partnerships') inserted in Income Tax Act 1961 by the Finance Act, 2011 contains four sections, viz. -
  - i. 115 JC Special provisions for payment of tax by certain limited liability partnerships
  - ii. 115 JD Tax credit for alternate minimum tax

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- iii. 115 JE Application of other provisions of this Act
- iv. 115 JF Interpretation in this chapter

LLPs shall be subject to alternate minimum tax @ 18.5 percent on the adjusted total income as per the income tax provisions. However LLPs will be able to enjoy credit of AMT to be carried forward for a period of 10 years, though in the first stance, there will be an outgo of 18.5% tax.

While regular income tax means the income tax payable for a previous year by a LLP on its total income as per the income tax provisions, alternate minimum tax (AMT) shall be computed on the adjusted total income @ 18.5 percent. Adjusted total income shall be the total income as per income tax provisions in normal course (before giving effect to chapter XII- BA provisions) as increased by deductions claimed under Chapter VI A (section 80A to 80VV) in relation to deductions in respect of certain incomes and deduction under section 10AA in respect of newly established units in SEZ.

Adjusted total income and AMT shall be computed as under –

Total income (as per IT provisions for regular tax)	A
Add deductions under section 80A to 80 VV	B
Add deduction under section 10 AA	C
	-----
Adjusted total income	D
	-----
AMT @ 18.5 on D	E
	-----

As per the amendment, section 115JD provides for credit of AMT paid for a period of 10 years thus, the Credit for tax paid by a limited liability partnership under section 115JC shall be the excess of the alternate minimum tax paid over the regular income-tax payable. This shall be allowed to be carried forward up to the tenth assessment year immediately succeeding the assessment year for which such tax credit becomes allowable and shall be allowed to be set off for an assessment year in which the regular income-tax exceeds the alternate minimum tax to the extent of the excess of the regular income-tax over the alternate minimum tax. Thus, AMT paid could be adjusted in ten following years but no refund is possible.

The new tax named alternate minimum tax will be levied w.e.f. 1<sup>st</sup> April 2012 and thus will apply to assessment year 2012-13 and in subsequent years.

### **Residential Status of LLP**

The persons who are liable to pay income tax and against whom proceeding for assessment are taken under the Income Tax Act are known as 'Assessees'. These persons can be natural persons or artificial juridical persons like, corporations, local authorities etc. For the purpose of assessment, two or more persons earning income jointly also form a separate entity 'firm' or 'association' or 'persons'. The persons forming an assessable entity can be:-

- an individual,
- a Hindu Undivided Family,
- a corporation,
- a firm (including Limited Liability Partnership),
- an 'association or persons' or 'body of individuals',
- a local authority,
- any other artificial juridical person not falling in any of the above categories.

Different rules for computation of income and tax exist for different types of persons.

All the persons, are further categorised on the basis of their residence in the taxable territory i.e. India. The residential status of a person is necessary to be known, as the tax liability is dependent on such status. Based on residence, a person can be:-

- resident; or
- non-resident

In order to be a resident, an individual should have been present in India in the previous year for at least 182 days.

A 'firm' or 'an association of persons', is generally 'resident'. The only exception is a firm whose control and management during the year is wholly from outside India.

According to section 6(2) of the Income tax Act 1961, "A Hindu undivided family, firm or other association of persons is said to be resident in India in any previous year in every case except where during that year the control and management of its affairs is situated wholly outside India."

Residential status of LLP is determined based on "control and management" test. Accordingly, a LLP can be said to be resident in India in any previous year except where during that year the control or its management is situated wholly outside India.

**Conversion from Private Company / Unlisted Public Company to LLP**

The Finance Act 2010 provided for tax neutrality on conversion of a private company or unlisted public company to a LLP:

- in the hands of company on transfer of a capital asset or intangible asset
- in the hands of shareholder on transfer of shares of private company or unlisted public company

Transfer of capital assets on transfer exempt subject to the following conditions:

- Transfer of all assets and liabilities to be made to LLP
- Shareholding to be equal to profit sharing ratio
- No consideration to partners except profit share & capital contribution
- No payment to partners from accumulated profits for 3 years
- Turnover/Total sales/gross receipts is less than Rs. 60 lakhs
- 50% of LLP profits to erstwhile shareholders for 5 years