

The Limited Liability Partnership Bill 2008

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Concept

- ✓ Hybrid of Partnership and Private Limited Company
- ✓ In managing the affairs akin to partnership
- ✓ In formalities akin to a private limited company.
- ✓ In liability of partners other than designated partners, akin to private limited company

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2

Comparison

Area	LLP	Partnership	Limited Liability Company
Governing Act	Limited Liability Partnership Bill 2008	The Partnership Act, 1932	The Companies Act, 1956
Number of Partners/Members	Minimum 2	Minimum 2	Minimum 2 (In Pvt. Company) 7 (In Public Company)
	Maximum: No Limit	10 for Banking business, else 20	In Private Limited company 50
Legal entity	Separate legal entity having juristic personality	Not a legal entity.	Separate legal entity
Manner of incorporation	By entering into an LLP agreement and registration with Registrar of Companies	By agreement between partners. It can be even oral.	By executing MOA and AOA and registering with the Registrar of Companies

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3

Comparison

Area	LLP	Partnership	Limited Liability Company
Name	Name to end with LLP or Limited Liability Partnership	Only in case of Registered firm, (Registered) is required	Name to end with Limited or Private Limited as the case may be
Common Seal	Optional	Not required	Must
Minimum number of directors/designated partners	2 at least one of them shall be Indian	No	At least 2 director.
Limitation of Liability	Liability of a partner other than designated partner is limited to his capital contribution or as agreed in LLP agreement.	Unlimited	To the extent of amount due on shares.

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4

Limited Liability Partnership

- Partnership formed and registered under LLP Act.
- Limited Liability Partnership Agreement means:
 - Any written agreement between
 - Partners of LLP or
 - LL and its partners
 - Which determines the mutual rights and duties of the partners and their rights and duties in relation to that LLP.

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5

Nature of LLP

- Legal entity separate from its partners.
- Have perpetual succession.
- Any change in partners not to have any effect on existence, right or liabilities of the LLP.
- Partnership Act not to apply.

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6

Who can be partner ?

- An individual who is
 - Not of Unsound mind
 - Not an undischarged insolvent.
 - Have not applied to be adjudicated as an insolvent and his application is pending.
- Body Corporate
 - A company as defined in Companies Act, 1956 and includes:

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7

Who can be partner ?

- LLP
 - LLP incorporated outside India
 - A company incorporated outside India.
- But does not include:
- A Corporation sole;
 - A Cooperative Society
 - Any body corporate or a LLP, exempted by the Central Government.

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8

Number of Partners

- Minimum 2 No limit on Maximum Numbers.
- If number reduced to 2 and the business is continued for a period of more than 6 months, the person who is the only partner shall be personally liable for the obligations of the LLP. (Similar to section 45 of the Companies Act, 1956)

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9

Designated Partners

- Every LLP to have at least 2 designated Partners. One of them shall be resident of India.
- If specified by Incorporation document, such persons to be designated partners.
- If it states that each of the partners to be designated partners from time to time, every partner shall be a designated partners.
- Prior Consent of designated partners is necessary. (Form 9)(
- Particulars of every person who has given consent is to be filed with Registrar. (Form 5)
- To take DPIN, if does not have DIN.

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10

Additional Qualification of Designated partners

- Not adjudged insolvent at any time within the preceding 5 years.
- Suspends or has suspended, at any time within the preceding 5 years, payment to his creditors or has made composition with them.
- Convicted of any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than 6 months.

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11

Liabilities of Designated partners

- Responsible for the doing of all acts, matters and things as are required to be done by LLP in respect of compliance of LLP Act.
- Acts as may be specified in the LLP Agreement.
- Liable to all penalties imposed on the LLP for any contravention of those provisions.
- Vacancy to be filled within 30 days of the vacancy.
- In case no designated partners is appointed or if at any time, there is only one designated partners, each partner shall be deemed to be a designated partners.

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12

Incorporation

- Purpose: for carrying on a lawful business with a view to profit.
- 2 or more persons shall subscribe their names to the incorporation document.
- Incorporation document to be filed with ROC of the State. (Form 2)
- Certificate from advocate, or CA, or CS or a Cost Accountant, engaged in the formation and by any one who subscribed his name as to the compliance to the provisions of LLP Act.

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13

Incorporation

Requirements of Incorporation document:

- In prescribed form Form 2
- Name
- Proposed Business
- Address of the registered office
- Name and address of the partners on incorporation.
- Name and address of designated partners on incorporation

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14

Incorporation

- Other particulars as may be prescribed.
- Certificate issued by the Registrar to be conclusive evidence.

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15

Effect of Registration

The LLP shall be capable of

- Suing and be sued.
- Acquiring, owning, holding and developing or disposing of property, whether movable or immovable, tangible or intangible;
- Having a common seal, if it decides to have one; and
- Doing and suffering such other acts and things as bodies corporate may lawfully do and suffer.

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16

Name

- It shall have 'LLP' or 'Limited Liability Partnership' in its name as the last words.
- It should not be
 - undesirable in the opinion of the Central Government; or
 - Identical or too nearly resembles to that of any other partnership firm or LLP or body corporate or a registered trade mark or a trade mark which is subject of an application of registration.

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17

Name

- In case of registration through inadvertance with undesirable name, the central government may order for change of name.
- Invoices, official correspondence and publications to bear the name, address of registered office and registration number and a statement that it is registered with limited liability.

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18

Partners and their relations

- Subscribers to the incorporation document shall be its partners.
- Any other person may become partner in accordance with the LLP agreement.

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19

Partners and their relations

- Mutual rights and duties of the Partners of LLP, and mutual rights and duties of LLP and its partners to be governed by the LLP agreement.
- Partner may lend money to or transact other business with the LLP and has the same rights and obligations as a person who is not a partner.

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20

Partners and their relations

- LLP agreement and any change therein is to be filed with Registrar in FORM 4
- In the absence of agreement as to any matter, the mutual rights and duties of the LLP and partners shall be determined as per the provisions relating to that matter in First Schedule.
- Partner to inform the LLP of any change in his name or address within a period of 25 days of such change.

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21

Cessation of Partnership Interest

- In accordance with the agreement with other partners.
- In the absence of agreement, by giving a notice in writing of not less than 30 days to the other partners of his intention.
- A partner shall cease :
 - On his death or dissolution of the LLP; or
 - On his declaration to be of unsound mind; or
 - On his adjudging insolvent or declaration as insolvent.

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22

Cessation of Partnership Interest

- Notice of cessation of partner to be filed within 30 days.
- Change in name or address of a partner, also to be notified within 30 days.
- Any person ceasing to be a partner may himself file a notice, if he has reasonable cause to believe that the LLP may not file the notice.

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23

Extent and Liability

- Partner is agent of LLP and not of other Partners.
- LLP not bound by the acts of any partner in dealing with a person if :
 - He has no authority and
 - The person knows that he has no authority or does not know or believe him to be a partner of the LLP.
- LLP is liable for a wrongful act or omission of a partner, in the course of the business or LLP or with its authority.

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24

Extent and Liability

- Obligation arising in contract or otherwise is the sole obligation of the LLP and is to be met out of the property of the LLP.
- A partner is not personally liable.
- Partner shall be liable for his wrongful act or omission but not of others.
- In case of fraudulent act, the liability shall be unlimited.

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25

Contributions

- Consists of:
 - Tangibles.
 - Movable
 - Immovable
 - Intangible property
 - Other benefit
 - Money, promissory notes,
 - Other agreements to contribute cash or property
 - Contracts for services performed or to be performed.

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26

Contributions

- Monetary value of contribution of each partner to be accounted for and disclosed in the accounts alongwith nature of contribution and amount. (Rule 32)
- To be valued by a practicing CA, Cost Accountant or by approved valuer from the panel maintained by the Central Government.
- Obligation of a partner shall be as per LLP agreement.

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27

Contributions

- Creditor, relying on an obligation without knowing of any compromise, may enforce the original obligation against such partner.

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28

Financial Disclosures

- To maintain proper books of accounts on 'cash basis' or 'accrual basis'
- To be maintained at Registered Office
- To prepare Statement of Account and Solvency within a period of 6 months from the end of financial year.

Financial Disclosures

- To be filed within 30 days after 60 days with ROC.
- To be audited, if not exempted. Exempted if turnover does not exceed Rs. 40 lacs or contribution does not exceed Rs. 25 lacs.
- To be signed by the designated partners.

Assignment and Transfer of Rights

- Rights to share profits and losses of the LLP and to receive distributions are transferable either wholly or in part.
- Transfer itself will not cause the disassociation of the partner or the dissolution and winding up of the LLP.
- Transfer in itself will not entitle the transferee or assignee to participate in the management or conduct of the activities or access information.

Financial Disclosures

- Annual return in form 11 shall be filed within 60 days of closure of the financial year.
- Annual return shall be accompanied by a certificate from a company secretary.
- Incorporation document, names of partners and changes, if any, Statement of Account and solvency and annual return shall be available for inspection.

Conversion to LLP

	From Firm	From Private Limited Company	From Unlisted Public Company
Meaning	Transfer of the property, assets, interests, rights, privileges, liabilities, obligations and the undertaking.		
New LLP to comprise	All the Partners and no one else.	All the shareholders and no one else.	All the shareholders and no one else.
Requirement	Statement by all the partners in prescribed form along with fees and incorporation document	Statement by all the shareholders in prescribed form along with fees and incorporation document	Statement by all the shareholders in prescribed form along with fees and incorporation document
Refusal	Registrar may refuse to register. Appeal will lie to the tribunal.		

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Vesting of property	All property to vest from the date of registration and deemed dissolution of the firm, or the company as the case may be.		
Pending proceedings	May be continued, completed and enforced against LLP.		
Conviction, ruling etc.	May be enforced against LLP.		
Agreement, deed contract of employment etc.	Will be deemed to be with the LLP		
Appointment of firm etc.	Will be deemed to be of LLP		
Liability for a period before conversion	Partners shall continue to be liable	Not Applicable	Not Applicable

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34

Miscellaneous Provisions

- Investigations
- Foreign Limited Liability Partnership establishing place of business in India.
- Compromise, Arrangement or Reconstruction of Limited Liability Partnership.
- Winding Up and Dissolution
- Applicability of Provisions of Companies Act to LLP.
- Electronic filing of documents.

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35

Thank you

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36