

## Limited Liability Partnership (LLP)

### **Meaning**

Limited Liability Partnership entities, the world wide recognized form of business organization has been introduced in India by way of Limited Liability Partnership Act, 2008. A Limited Liability Partnership (**hereinafter called as “LLP”**) combines the advantages of both the Company and Partnership into a single form of organization. In an LLP one partner is not responsible or liable for another partner's misconduct or negligence; this is an important difference from that of an unlimited partnership. In an LLP, all partners have a form of limited liability for each individual's protection within the partnership, similar to that of the shareholders of a corporation. However, unlike corporate shareholders, the partners have the right to manage the business directly. An LLP also limits the personal liability of a partner for the errors, omissions, incompetence, or negligence of the LLP's employees or other agents.

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(annexure 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.

LLP has a separate legal entity, liable to the full extent of its assets, the liability of the partners would be limited to their agreed contribution in the LLP. Further, no partner would be liable on account of the independent or un-authorized actions of other partners, thus allowing individual partners to be shielded from joint liability created by another partner's wrongful business decisions or misconduct.

Limited Liability Partnership Act, 2008 came into effect by way of notification dated 31st March 2009.

### **Limited Liability Partnership under Limited Liability Partnership Act, 2008**

The Limited Liability Partnership Act (**hereinafter called as “the act”**), 2008, under section 2 (n) define LLP as - “limited liability partnership means a partnership formed and registered under this act. Further, section 3 of the act define LLP as-

- (1) A limited liability partnership is a body corporate formed and incorporated under this Act and is a legal entity separate from that of its partners.
- (2) A limited liability partnership shall have perpetual succession;
- (3) Any change in the partners of a limited liability partnership shall not affect the existence, rights or liabilities of the limited liability partnership.

### **Advantages of LLP:-**

Listed below are the advantages of forming LLP:-

- Low cost of Formation.
- Easy to establish.
- Easy to manage & run.
- No requirement of any minimum capital contribution.
- No restrictions as to maximum number of partners.
- LLP & its partners are distinct from each other.
- Partners are not liable for Act of partners.
- Less Compliance level.
- No exposure to personal assets of the partners except in case of fraud.
- Fewer requirements as to maintenance of statutory records.
- Less Government Intervention.
- Easy to dissolve or wind-up.
- Professionals can form Multi-disciplinary Professional LLP, which was not allowed earlier.
- Audit requirement only in case of contributions exceeding Rs. 25 lakh or turnover exceeding Rs. 40 lakh.

### **Disadvantage:-**

Listed below are disadvantages of forming LLP:-

- Any act of the partner without the other partner, may bind the LLP.
- Under some cases, liability may extend to personal assets of partners.
- Cannot raise money from Public.

## Steps for incorporation:-

### 1. Deciding the Partners and Designated Partners:-

A LLP can be incorporated with a minimum of atleast two partners who can be Individuals or Body Corporate through their nominees. Further for incorporating an LLP, of the total number no. of partners, atleast two shall be Designated Partners, of which atleast one must be an Indian Resident.

*Parameters for deciding the Partners and Designated Partners:*

- a) Atleast Two Partners; Individuals or Body Corporate through individual nominees.
- b) Minimum of Two Individuals as Designated Partners, of total no. of Partners.
- c) Atleast One Designated Partner to be Resident Indian.

*Note:-*

A person '**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. [Explanation to Section-7(1) of the act]

'**Designated Partner**' means a partner who is designated as such in the incorporation documents or who become a designated partner by and in accordance with the Limited Liability Partnership Agreement [Explanation to Section – 7(2) sub clause (ii) of the act]

### 2. Obtaining DPIN No. & Digital Signature:-

**Designated Partner Identification Number (DPIN):** Section 7 (6) of LLP Act 2008, provides that every Designated Partner to obtain a DPIN from the Central Government.

DPIN is an eight digit numeric number allotted by the Central Government in order to identify a particular partner and can be obtained by making an online application in **eForm 7** to Central Government and submitting the physical application along with necessary identity and Address proof of the person applying with prescribed fees.(note eForm 7 is available on [www.llp.gov.in](http://www.llp.gov.in))

**Digital Signature Certificate:** As all the documents and forms required for incorporating an LLP in India to be filed electronically and under the signatures of Designated Partners, thus atleast one Designated Partner to obtain the digital signature certificates from government recognized DSA's (Digital Signature Algorithm). 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.

Likewise the manual signatures, digital signature certificates are individual specific and no partner needs to obtain more than one.

### 3. Checking the Name Availability:-

The next step is to decide the name for the proposed LLP to be incorporated, anyone intending to incorporate an LLP has to evaluate his proposed name under the prescribed parameters and make an application in Form 1 of Rule 18(5) of the Limited Liability Partnership Act 2008, for reservation of the desired name.

The name of the limited liability partnership shall not be similar or identical with Company or LLP already registered in India and it should not contains words prohibited under the '**Emblems and Names (Prevention of improper use) Act, 1950**' or which are also not '**Undesirable**' in the opinion of Central Government or which satisfies the conditions prescribed under rule 18(2). For more information check Name Availability Guidelines.

In case any Body Corporate is partner, copy of Board resolution authorizing the incorporation of LLP shall be attached.

#### **\*Undesirable Names- Connote**

If in the opinion of the department, the name by which a Company is registered gives so misleading an indication of the nature of its activities as to be likely to cause harm to the public, the department may direct it to change its name. A Company registered under the Companies Act, is not entitled to carry on its business in such a way or under such a name, as to represent that its business is the business of any other company or firm or person; and the absence of fraud is immaterial. In such cases, the old company or firm can apply to the court for an injunction, and in such cases the principles that apply to individuals trading under identical or similar names would become applicable.

### 4. Drafting of LLP Agreement:-

The next pertinent step is drafting of Limited Liability Partnership Agreement governing the mutual rights and duties among the partners and among the LLP and its partners.

The basic contents of Agreement are:

- a) Name of LLP
- b) Name of Partners & Designated Partners

- c) Form of contribution
- d) Profit Sharing ratio
- e) Rights & Duties of Partners
- f) Proposed Business
- g) Rules for governing the LLP

In case no agreement is entered into, the rights & duties as prescribed under Schedule I to the LLP Act shall be applicable. It is not necessary to have the LLP Agreement signed at the time of incorporation, as the details of the same needs to field in eForm 3 within 30 days of incorporation but in order to avoid any dispute between the partners as to the terms & conditions of the agreement after the formation of LLP, it is always beneficial to have the LLP Agreement drafted and executed before the incorporation of the LLP.

***In case the Agreement is executed outside India, than it must be notarized and consularize.***

5. Filing of incorporation document:-

Next is the filing of Incorporation documents, consent of Partners and declaration electronically through the medium of e-forms prescribed with the Registrar of LLP for incorporation of the LLP on payment of prescribed fees based on the total monetary value of contribution of partners in the proposed LLP.

**eForm 2: Incorporation Document**

This is an informative document setting down the details of LLP, its Partners including designated partners along with their amount of contribution and consent for forming a Limited Liability Partnership to carry on a lawful business with profit motive along with declaration stating that all the requirements of Limited Liability Partnership Act, 2008 regarding incorporation of LLP in India have been complied with.

**eForm 3: Details of LLP Agreement**

This form provides for the necessary information in respect to the LLP Agreement entered into between the partners.

**eForm 4: Consent of Partners** Consent of each partner to become a partner of Limited Liability Partnership along with their address and identity proof to be filed with the Registrar of Companies.

**Subscription Sheet:** Just like in case of Company formation, the partners are required to subscribe their names along with signatures to the subscription sheet, which shall be witnessed by any chartered Accountant/Company Secretary/Advocate in practice.

***In case the subscription sheet is executed outside India, than it must be notarized and consularized.***

**eForm 3 & 4** are required to filed within 30 days of the incorporation.

All the eforms will be digitally signed by any Designated partner and shall be certified by an advocate/company secretary/chartered accountant/cost accountant in practice engaged in the formation of LLP.

**Important points:**

- Filing will be done on [www.llp.gov.in](http://www.llp.gov.in)
- With All the Designated Partners need to be register as Business User.
- Digital Signature is required only for the Designated Partner who would be signing all the eForms.

**6. Certificate of Incorporation:-**

After the Registrar is satisfied that all the formalities with respect to the incorporation has been complied, he will issue a Certificate of Incorporation as to formation of the LLP within maximum of 14 days from date of filing of documents. The Certificate of Incorporation issued shall be the conclusive evidence of formation of the LLP.

**Total Documents Required:**

- eForm 1-Name Availability Application
- eForm 2-Incorporation Document
- eForm 3- Details of LLP Agreement
- eForm 4-Consent of Partners
- eForm 7-Application for Designated Partners Identification Number
- Subscription Sheet
- LLP Agreement duly stamped as per relevant Stamp Act of the State.
- Proof of Address of Registered Office
- Consent of Partners and Designated Partners

## **ANNEXURE -1**

### **Schedule 1 read with section 23(4) - absence of agreement**

#### **Provisions regarding matters relating to mutual rights and duties of partners and limited liability partnership and its partners applicable in the absence of any agreement on such matters**

1. The mutual rights and duties of the partners and the mutual rights and duties of the limited liability partnership and its partners shall be determined, subject to the terms of any limited liability partnership agreement or in the absence of any such agreement on any matter, by the provisions in this Schedule.
2. All the partners of a limited liability partnership are entitled to share equally in the capital, profits and losses of the limited liability partnership.
3. The limited liability partnership shall indemnify each partner in respect of payments made and personal liabilities incurred by him—
  - (a) in the ordinary and proper conduct of the business of the limited liability partnership; or
  - (b) in or about anything necessarily done for the preservation of the business or property of the limited liability partnership.
4. Every partner shall indemnify the limited liability partnership for any loss caused to it by his fraud in the conduct of the business of the limited liability partnership.
5. Every partner may take part in the management of the limited liability partnership.
6. No partner shall be entitled to remuneration for acting in the business or management of the limited liability partnership.
7. No person may be introduced as a partner without the consent of all the existing partners.
8. Any matter or issue relating to the limited liability partnership shall be decided by a resolution passed by a majority in number of the partners, and for this purpose, each partner shall have one vote. However, no change may be made in the nature of business of the limited liability partnership without the consent of all the partners.
9. Every limited liability partnership shall ensure that decisions taken by it are recorded in the minutes within thirty days of taking such decisions and are kept and maintained at the registered office of the limited liability partnership.
10. Each partner shall render true accounts and full information of all things affecting the limited liability partnership to any partner or his legal representatives.

11. If a partner, without the consent of the limited liability partnership, carries on any business of the same nature as and competing with the limited liability partnership, he must account for and pay over to the limited liability partnership all profits made by him in that business.

12. Every partner shall account to the limited liability partnership for any benefit derived by him without the consent of the limited liability partnership from any transaction concerning the limited liability partnership, or from any use by him of the property, name or any business connection of the limited liability partnership.

13. No majority of the partners can expel any partner unless a power to do so has been conferred by express agreement between the partners.

14. All disputes between the partners arising out of the limited liability partnership agreement which cannot be resolved in terms of such agreement shall be referred for arbitration as per the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996).