THE LLP ACT 2008- A BRIEF OVERVIEW

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The Limited Liability Partnership Act, 2008 got the assent of the President of India on January 7, 2009 and finally got the status of an Act of India. The Act is divided into 14 chapters and 4 schedules. The Act has come into force with effect from 1st April 2009.

Salient features of the Act

1. Limited liability partnership is a

Sec 3(1) Body corporate separate from that of its partners.

(2) Perpetual succession.

(3) Any change in the partnership shall not affect the existence, rights or liabilities of the limited liability partnership.

2. Non-applicability of the Indian Partnership Act, 1932.

Sec 4.Provisions of the Indian Partnership Act, 1932 shall not apply to a limited liability partnership.

3. Who can be a Partner

Sec 5.Any individual or body corporate may be a partner in a limited liability partnership

4. Minimum number of partners.

Sec 6(1) Minimum two partners are required.

(2)If at any time the number of partners is reduced and the business is carried on for more than six months, the person, who is the only partner, shall be liable personally.

5. Designated partners (DP)

Sec 7(1) Every limited liability partnership shall have at least 2 designated partners who are individuals and at least 1 shall be a resident Indian:

(2)Subject to the provisions of sub-section (1),ð

(i) if the incorporation documentð

(a) specifies who are to be designated partners, such persons shall be designated partners on incorporation; or

(b) every partner shall be a designated partner, if nothing is specified

(3)Prior consent is necessary to act as DP.

(4)Filing with the registrar the particulars of designated partner within 30 days of his appointment.

(6)Every designated partner shall obtain a Designated Partner Identification Number (DPIN) from the Central Government and the provisions of sections 266A to 266G (both inclusive) of the Companies Act, 1956 shall apply mutatis mutandis for the said purpose.

6. Liabilities of designated partners.

Sec 8.(a)Responsible for the doing of all acts in respect of compliance of the provisions including filing of any document, return, statement, etc.

(b)liable to all penalties imposed for any contravention.

7. Changes in designated partners.

Sec 9 Designated partner to be appointed within 30 days of a vacancy arising for any reason.

8. Punishment for contravention of sections 7, 8 and 9.

Sec 10.(1) Contravention of the provisions of sub-section (1) of section 7, attracts penalty which shall be punishable with fine not be less than ten thousand rupees but which may extend to five lakh rupees.

(2)If the limited liability partnership contravenes the provisions of sub-section (4) and sub-section (5) of section 7, section 8 or section 9, penalty is fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees.

9. Name.

Sec 15(1) Every llp shall have either the words ñlimited liability partnershipò or the acronym ñLLPò as the last words of its name.

(2) No limited liability partnership shall be registered by a name which, in the opinion of the Central Government is ð

(a) undesirable; or

(b) identical or too nearly resembles to that of any other llp.

Sec16(2) Approved name can be enjoyed for 3 months within which incorporation process to be followed and completed.

10. Relationship of partners.

Sec 23(1) Rights and duties of the partners and the rights and duties of a limited liability partnership shall be governed by the limited liability partnership agreement between the partners, or between the limited liability partnership and its partners.

(2) Changes, if any, made therein shall be filed with the Registrar.

(4) In the absence of agreement, rights and duties shall be determined by the provisions of the **First Schedule.**

11. Cessation of partnership interest.

Sec 24 (1) A person may cease to be a partner in accordance with an agreement with the other partners or, in the absence of agreement, by giving a notice in writing of not less than 30 days to the other partners of his intention to resign.

(5) Where a partner of a limited liability partnership ceases to be a partner, unless otherwise provided, the former partner or a person entitled to his share in

(6) consequence of the death or insolvency, he shall be entitled to receive from the limited liability partnership ð

(a) an amount equal to the capital contribution of the former partner; and

(b) his right to share in the accumulated profits.

12. Registration of changes in partners

Sec 25(1) Every partner shall inform the limited liability partnership of any change in his name or address within a period of 15 days of such change.

(2) A limited liability partnership shallð

(a) where a person becomes or ceases to be a partner, file a notice with the Registrar within 30 days from the date he becomes or ceases to be a partner; and

(b) where there is any change in the name or address of a partner, file a notice with the Registrar within 30 days of such change.

13. Extent of liability of limited liability partnership

Sec 27 (1) A limited liability partnership is not bound by anything done by a partner in a dealing with a person if-

(a) the partner in fact has no authority to act; and

(b) the person knows that he has no authority or does not know or believe him to be a partner of the limited liability partnership.

(2) The limited liability partnership is liable if a partner of a limited liability partnership is liable to any person as a result of a wrongful act or omission on his part

(3) An obligation shall be solely the obligation of the limited liability partnership.

(4) The liabilities of the limited liability partnership shall be met out of the property of the limited liability partnership.

14. Extent of liability of partner

Sec 28 (1) A partner is not personally liable, directly or indirectly for an obligation referred to in sub-section (3) of section 27 stated above.

(2) This section shall not affect the personal liability of a partner for his own wrongful act or omission, but a partner shall not be personally liable for the wrongful act or omission of any other partner.

15. Holding out.

Sec 29(1) Any person, who by words spoken or written or by conduct, represents himself, or knowingly permits himself to be represented to be a partner is liable to any person who has on the faith of any such representation given credit to the limited liability partnership, whether the person representing himself or represented to be a partner does or does not know that the representation has reached the person so giving credit:

Provided that where any credit is received by the limited liability partnership as a result of such representation, the limited liability partnership shall be liable to the extent of credit received by it or any financial benefit derived thereon.

(2) Where after a partner's death the business is continued in the same limited liability partnership name, the continued use of that name or of the deceased partner's name as a part thereof shall not of itself make his legal representative or his estate liable for any act of the limited liability partnership done after his death.

16. Whistle blowing.

Sec 31(1) The Court or Tribunal may reduce or waive any penalty leviable against any partner or employee, if it is satisfied that—

(a) such partner or employee has provided useful information during investigation; or

(b) when any information given by any partner or employee (whether or not during investigation).

(2) No partner or employee of any limited liability partnership may be discharged, demoted, suspended, threatened, harassed or in any other manner discriminated merely because of providing information.

17. Maintenance of books of account, other records and audit etc.

Sec 34(2) Every limited liability partnership shall, within a period of 6 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.

(3) Every limited liability partnership shall file within the prescribed time, the Statement of Account and Solvency.

(4) The accounts of limited liability partnerships shall be audited in accordance with such rules as may be prescribed:

Provided that the Central Government may, by notification in the Official Gazette, exempt any class or classes of limited liability partnerships

(5) Any limited liability partnership which fails to comply with the provisions of this section 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.

18. Annual Return

Sec 35 (1) Every limited liability partnership shall file an annual return duly authenticated with the Registrar within 60 days of closure of its financial year in such form and manner and accompanied by such fee as may be prescribed.

(2) Any limited liability partnership which fails to comply with the provisions of this section shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees.

(3) If the limited liability partnership contravenes the provisions of this section, the 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.

19. Compounding of offences.

Sec 39 The Central Government may compound any offence under this Act which is punishable with fine only, by collecting from a person reasonably suspected of having committed the offence, a sum which may extend to the amount of the maximum fine prescribed for the offence.

20. Partner's transferable interest.

Sec 42 (1) The rights of a partner to a share of the profits and losses and to receive distributions in accordance with the limited liability partnership agreement are transferable either wholly or in part.

(2) The transfer of any right by any partner pursuant to sub-section (1) does not by itself cause the disassociation of the partner or a dissolution and winding up of the limited liability partnership.

(3) The transfer of right pursuant to this section does not, by itself, entitle the transferee or assignee to participate in the management or conduct of the activities of the limited liability partnership, or access information concerning the transactions of the limited liability partnership.

21. Application by partners for investigation.

Sec 44 An application by partners for investigation shall be supported by such evidence as the Tribunal may require.

Sec 46(2) In the case of any entity or partner or designated partner, the inspector shall not exercise his power of investigating into, and reporting on, its or his affairs without first having obtained the prior approval of the Central Government thereto, provided opportunity of show cause should be given.

22. Conversion from firm into limited liability partnership.

Sec 55 A firm may convert into a limited liability partnership in accordance With the provisions of this Chapter and the Second Schedule.

23. Conversion from private company into limited liability partnership.

Sec 56 A private company may convert into a limited liability partnership in accordance with the provisions of this Chapter and the Third Schedule.

24. Conversion from unlisted public company into limited liability partnership

Sec 57 An unlisted public company may convert into a limited liability partnership in accordance with the provisions of this Chapter and the Fourth Schedule

25. Registration and effect of conversion

Sec 56(1) Provided that the limited liability partnership shall, within 15 days of the date of registration, inform the concerned Registrar of Firms or Registrar of Companies, as the case may be, with which it was registered under the provisions of the Indian Partnership Act, 1932 or the Companies Act, 1956, as the case may be, about the conversion and of the particulars of the limited liability partnership in such form and manner as may be prescribed.

26. Compromise, arrangement or reconstruction of limited liability partnerships

Sec 60.(1) Where a compromise or arrangement is proposed-

(a) between a limited liability partnership and its creditors; or

(b) between a limited liability partnership and its partners,

the Tribunal may, on the application of the limited liability partnership or of any creditor or partner of the limited liability partnership, or, in the case of a limited liability partnership which is being wound up, of the liquidator, order a meeting of the creditors or of the partners, as the case may be, to be called, held and conducted in such manner as may be. prescribed or as the Tribunal directs.

(2)If a majority representing three-fourths in value of the creditors, or partners, as the case may be, at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the Tribunal, by order be binding on all the creditors or ail the partners, as the case may be, and also on the limited liability partnership, or in the case of a limited liability partnership which is being wound up, on the liquidator and contributories of the limited liability partnership:

Provided that no order sanctioning any compromise or arrangement shall be made by the Tribunal unless the Tribunal is satisfied that the limited liability partnership or any other person by whom an application has been made under sub-section (1) has disclosed to the Tribunal, by affidavit or otherwise, all material facts.

28. Winding up and dissolution

Sec 63. The winding up of a limited liability partnership may be either voluntary or by Tribunal.

29. Rules for winding up and dissolution

Sec 65 The Central Government may make rules for the provisions in relation to winding up and dissolution of limited liability partnerships.

27. Business transaction of partner with Limited liability partnership

Sec 66 A partner may lend money to and transact other business with the limited liability partnership and has the same rights and obligations with respect to the loan or other transactions as a person who is not a partner.

28. Winding up and dissolution

Sec 63. The winding up of a limited liability partnership may be either voluntary or by Tribunal and limited liability partnership, so wound up may be dissolved.

In order to enable the comprehensive framework for regulation of Limited Liability Partnerships (LLPs) to be viewed by stakeholders, this Ministry has placed (i) the LLP (Concept) Rules and Forms and (ii) the Concept LLP (Winding up and Dissolution) Rules on its website (www.mca.gov.in) for public comments. However establishment of a place of business in India by Foreign LLPs were not included in the above two sets of Concept Rules. These have now been prepared and placed on the Ministryô s website for public comments.

Comparison between Traditional Partnership and LLP

Traditional Partnership	Limited Liability Partnership
Distinctions	
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 mandatory.	LLP is incorporated under LLP Act. Incorporation is 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.
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 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 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.
Similarities	
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

	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.

Registration of LLP- Steps in brief

Stage I – Selection of Partn ers

To form a LLP, there Minimum two partners and at least two shall be designated partners having DIPN. In case of body corporate as partners, their nominee can be act as designated partners. Out of two designated partners, one must be resident in India. (Who has stayed in India for a period of not less than one hundred and eighty two days during the immediately preceding financial year)

Stage II – Apply for DPIN in Form 7 and also obtain Digital Signature Certificate

DPIN can be obtained by making an application online with MCA. After submitting the online application, signed physical copy of Form 7 has to be submitted to Ministry of Corporate Affairs along with certified copies of address proof and Identity proof of the applicant.

Digital Signature can be obtained from any of the Certifying Authorities in India.

Stage III – Apply for Name reservation in Form 1

After finalization of name, an application of name availability has to be filed in **form 1** with MCA for approval. Please note that selection of name is subject to Guidelines issued by MCA.

Stage IV – Agreement

LLP agreement has to be drafted line with LLP Act. It is not mandatory to file LLP agreement at the time of registration and same can be filed within 30 days. If no agreement is framed, provisions of Schedule I of the LLP Act shall be applicable.

Stage V - Filing of Incorporation documents with ROC

Form 2 : Details of partners, registered office etc

Subscription Sheet: All 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.

Form 3: LLP agreement ï this can be filed with in 30 days from the date of registration

Form 4: Consent of Partners - Consent of each partner to become a partner of Liability Partnership

Above said documents are required to be filed after signing digitally. After verification, registrar will register all documents and issue Certificate of Incorporation.

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