

Steps / Process / Procedure for LLP Formation in India

The following steps are required to be undertaken for forming LLP in India:

Step I 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:

1. **Atleast Two Partners** are required for forming a LLP. These can be Individuals or Body Corporate through individual nominees.
2. The LLP should have **Minimum of Two Individuals** as Designated Partners, out of the total no. of Partners.
3. **Atleast One Designated Partner in the LLP should be Resident Indian.**

In case of conversion of Private Limited Company into LLP, all the shareholders of the Company to be partners in the LLP and no one else and also there will be no security interest subsisting or in force at the time of application in the assets of the Company.

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())

'**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

Step II Obtaining DIN No. & Digital Signature

Director Identification Number (DIN): **Every Partner to obtain a DIN** from the Central Government.

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. 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.

Step III 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 contain 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.

Step IV 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:

- Name of LLP
- Name of Partners & Designated Partners
- Form of contribution
- Profit Sharing ratio
- Rights & Duties of Partners
- Proposed Business

- 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 consularized, for more information check “Incorporation of LLP” under FAQ’s

Step V Filing of Incorporation Documents

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, for more information check “Incorporation of LLP” under FAQ’s

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.

Step VI 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.

Documents Required:

- eForm 1-Name Availability Application
- eForm 2-Incorporation Document
- eForm 3- Details of LLP Agreement
- eForm 4-Consent of Partners
- Subscription Sheet
- LLP Agreement duly stamped as per relevant Stamp Act of the State.
- Consent of Partners and Designated Partners