Series
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FAQ's closure of
Limited Liability Partnership

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In this Flash Editorial author begins by referring provisions of closure of LLP in short then further continue with some important FAQ's in relation to Closure / Strike off of LLP. The main thrust of the article, however, is upon the LLP [1] Notification dated: 16th May, 2017 with reference to LLP (Amendment) Rules, 2017.

This is article no. 407 of the series of editorials written by the author on corporate laws {including Companies Act, 2013, SEBI, RBI Regulations, IBC, LLP Act, 2008 etc.}.

[1] (http://www.mca.gov.in/Ministry/pdf/LimitedLiabilityPartnershipAmendmentRules2017_22052017.pdf)

Situation: 1

Regular e-forms Requirements & Other Requirements:

S. No.	Agenda	Particulars	e-forms	Due Date Form Filling
1.	STATEMENT OF ACCOUNT & SOLVENCY	A "Statement of Accounts and Solvency" in prescribed form shall be filed by every LLP with the Registrar every year. sub-section (3) of section 34	LLP-8	30th October
2.	ANNUAL RETURN	Every LLP would be required to file annual return in Form 11 with ROC within 60 days of closer of financial year.	LLP-11	30 May

A. Whether LLP have to complete Annual Fillings with ROC (E form LLP-8 and LLP-11) before filling application for Strike off of LLP.

Statutory Provisions Contained Under the Act:

Provisions of Strike off of LLP are given in clause (b) of sub rule 1 of Rule 37 of LLP Rules 2008. As per rules, there is no provisiosn for exemption from the filing of e-form LLP- 8/ 11 for strike off of LLP. Therefore, every LLP have to complete annual filing before strike off of LLP.

However, by LLP Amendment Rules, 2017 situation has been changed. Extract of the Amendment Rules *"The limited liability partnership referred to in clause (b) of sub-rule (1) of rule 37 shall, file overdue returns in Form 8 and Form 11 up to the end of the financial year in which the limited liability partnership [2]**ceased to carry on its business** or commercial operations before filing of form for strike off".*

[2]The date of cessation of commercial operation is the date from which the Limited Liability Partnership ceased to carry on its revenue generating business and the transactions such as receipt of money from debtors or payment of money to creditors, subsequent to such cessation will not form part of revenue generating business

Interpretation Note:

As per the language of amendment rules LLP shall file overdue returns in Form 8 and Form 11 "*up to the end of the financial year*" in which LLP "*ceased to carry on its business or commercial operation".*

Hence, considering the provisions of amendment rules one can opine that if a non operational LLP [3]desires to strike off it must complete the filing of Form 8 and Form 11(Here after referred as "Annual Filing")up to the end of the financial year in which the limited liability partnership ceased to carry on its business or commercial operations.

Like: If a LLP Incorporated on 10th April, 2010. It ceases / stops to carry on its business from 20th February, 2013 (F.Y. 2012-13).

Situations: (i) LLP has completed filing of e-forms LLP - 8 / 11till 31.03.2017.(ii) LLP has filed e-forms LLP - 8 / 11for end of financial year 31st March, 2013. (iii) LLP has not filed e-forms LLP - 8 / 11since incorporation.

Situation Analysis:
(i) If LLP has completed Annual filing till the date of strike off, then no question arise in respect of completion of Annual Filing. LLP can go for strike off as per rule 37.

(ii) In this situation, LLP has filed annual filing form till the financial year ended 31.03.2013 (the last financial year in which LLP was operational). From 1st April, 2013 LLP has not done any business or not carried any business.
Therefore, as per amendment rule, 2017 LLP can file application for strike off of LLP with ROC without completion of annual filing forms since financial year 2013-14.

(iii) In this situation, LLP has not filed annual form since incorporation. However, if LLP wants to apply for strike off under rule 37 then as per amendment rules it has to complete annual filing till the financial year 2012-13. [Late fee for completion of annual filing form is INR 100 per day till the date of filing of form].

[3] As per Rule 37 of LLP Rules if a LLP wants to strike off it should not carrying on any business operations for the period of one year or more.

Check Points:

I. LLP should not be carrying any business or should be non operational at least for a period of one year.
II. Check – Whether LLP has filed annual forms till the date when it ceased to carry on its business or commercial operations.

B. Whether Company have to filed Initial LLP Agreement and any amendment in LLP Agreement (E form LLP-3) with ROC before filling application for Strike off of LLP.

Statutory Provisions Contained Under the Act:

LLP rules don't provide any exemption from the filing of LLP agreement in e-form LLP 3 with ROC. Therefore, before filing of application for strike off it has to file LLP Agreement with ROC.

However, by LLP Amendment Rules, 2017 situation has been changed. Extract of the Amendment Rules *"LLP file e-form 24 enclosed with copy of the initial limited liability partnership agreement, if entered into and not filed, along with changes thereof in cases where the Limited Liability Partnership has not commenced business or commercial operations since its incorporation."*

Interpretation Note:

As per the language of amendment rules LLP shall enclose copy of initial LLP Agreement "*if entered into and not filed" "along with any change in agreement" "in cases where the Limited Liability Partnership has not commenced business or commercial operations since its incorporation*

Hence, considering the provisions of amendment rules one can opine that if a LLP is non-operational since incorporation, it can file application for strike off without filing of e form LLP-3 with ROC.

Situations: (i) If a LLP Incorporated on 1st April, 2011. It ceases / stops to carry on its business from 10th January, 2014 (F.Y. 2013-14). It has not filed LLP-3 with initial LLP Agreement. Whether it can apply for strike off without filing of LLP-3?

Situations: (ii) If a LLP Incorporated on 1st April, 2011 and has not commence business since incorporation. It has not filed LLP-3 with initial LLP Agreement. Whether it can apply for strike off?

Situations: (iii) If a LLP Incorporated on 1st April, 2011. It ceases / stops to carry on its business from 10th January, 2014 (F.Y. 2013-14). It has entered into amendment LLP agreement and not filed LLP-3 with such amendment Agreement. Whether it can apply for strike off without filing of LLP-3?

Situation Analysis:

(i) **In this case** the LLP has commenced business and forget to file the Initial LLP Agreement then as per amendment rule if the desires to apply for strike off its have to file LLP-3 with initial LLP Agreement.

(ii) In this case LLP has not commenced business or operation since incorporation and not filed initial LLP Agreement and any amendment in LLP Agreement.
Therefore, as per amendment rule, 2017 LLP can file application for strike off of LLP with ROC without completion of filing of forms LLP – 3.

(iii) In this Case LLP has commenced business, file the initial LLP Agreement with ROC but fails to file the amendment in the initial LLP Agreement.However, if LLP wants to apply for strike off under rule 37 then as per amendment rules it has to file Amendment in initial LLP Agreement in LLP-3 with ROC. [Late fee for filing form is INR 100 per day till the date of filing of form].

Check Points:

I. Check – Whether LLP has filed Initial LLP Agreement.
II. Check – Whether LLP has filed Amendment in initial LLP Agreement, if any.
III. If LLP not file any of above two agreements then Check – Whether LLP commenced any business or operation since incorporation.

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