

Aurangabad Chapter of WIRC of ICSI

Full-day Seminar
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Venue: Chapter Office, Station
Road, Aurangabad.

LLP (Amendment) Act 2021

CS P C AGRAWAL

PAST CHAIRMAN, AURNAGABAD CHAPTER OF WIRC OF ICSI

20TH MARCH 2022

The Limited Liability
Partnership
(Amendment) Act, 2021



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The Limited Liability Partnership (Amendment) Act, 2021



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Legal framework

- Limited Liability Partnership Act 2008
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 - *Limited Liability Partnership (Winding up and Dissolution) Rules 2012*
- *Companies Act 2013*
- *NCLT Rules 2016*
- *NCLAT Rules 2016*

Historical background

Date	Development
7/1/2009	LLP Act 2008 notified in Gazette
31/3/2009	Several Sections of LLP Act 2008 came into effect on 31/3/2019, 1/4/2009 and 31/5/2009
18/9/2019	Company Law Committee set up to suggest decriminalisation of offences and other amendments in LLP Act 2008
4/1/2021	Committee submitted report to the Government
30/7/2021	Amendment Bill introduced in Rajya Sabha <i>(All recommendations of the Committee accepted except issue of NCDs)</i>
4/8/2021	Amendment Bill passed by Rajya Sabha
9/8/2021	Amendment Bill passed by Lok Sabha
13/8/2021	Amendment Act notified in gazette
11/2/2022	➤ Commencement notification issued (effective from 1.4.2022) ➤ LLP Amendment Rules 2022 notified (effective from 1.4.2022) ➤ Some Sections of CA 2013 made applicable to LLPs
4/3/2022	LLP (2 nd Amendment) Rules 2022 notified (web based forms)
1/4/2022	LLP (Amendment) Act 2021 will come into force

Amendments at a glance

- Amendments relating to offences, fines & penalties:
 - *Decriminalisation of offences*
 - *Other amendments in fines & penalties*
 - *Compounding of offences*
 - *Special courts for LLPs*
 - *Adjudication of penalties*
- Reduction in filing fee
- Concept of small LLPs introduced
- Concept of start-up LLPs introduced
- 'Business' of LLPs – Definition amended
- Amendment in provisions relating to names of LLPs
- Resident partner – Period of residence in India reduced from 180 days to 120 days in FT
- Accounting and auditing standards for LLPs
- Other amendments

Section	Offence	Who will be liable?	Punishment before amendment	Punishment after amendment
10(1)	Contravention of Sec.7(1) <i>(Min.2 DPs and 1 resident in India)</i>	LLP and its every partner	Fine min. Rs.10,000 max. Rs.5 lakhs	Penalty of Rs.10,000 + Rs.100 per day subject to max. of Rs.1 lakh for LLP and Rs.50,000 for partner
10(2)	Contravention of Sec.7(4) <i>(filing consent to act as partner within 30 days)</i>	LLP and its every partner	Fine min. Rs.10,000 max. Rs.1 lakh	Penalty of Rs.5,000 + Rs.100 per day subject to max. of Rs.50,000 for LLP and Rs.25,000 for partner
10(3)	Contravention of Sec.7(5) <i>(eligibility for DP)</i> or Sec.9 <i>(changes in DP)</i>	LLP and its every partner	Fine min. Rs.10,000 max. Rs.1 lakh	Penalty of Rs.10,000 + Rs.100 per day subject to max. of Rs.1 lakh for LLP and Rs.50,000 for partner
13(4)	Default in compliance of Sec.13 <i>(Regd. Office of LLP and changes therein)</i>	LLP and its every partner	Fine min. Rs.2,000 max. Rs.20,000.	Penalty of Rs.5,000 per day – max.Rs.50,000 for LLP and every partner

Section	Offence	Who will be liable?	Punishment before amendment	Punishment after amendment
21(2)	Contravention of Sec.21 (publication of name, address etc of LLP)	LLP	Fine min. Rs.2,000, max. Rs.25,000	Penalty of Rs.10,000
25(4)	Contravention of Sec.25(2) (filing return for change in partner or his name or address)	LLP and every DP	Fine min. Rs.2,000 max. Rs.25,000	Penalty of Rs.10,000.
25(5)	Contravention of Sec.25(1) by partner (intimating LLP of change in his name or address)	Partner	Fine min. Rs.2,000 max. Rs.25,000	Penalty of Rs.10,000
34(5)	Contravention of Sec.34(3) (Filing of financials every year)	LLP	Fine min. Rs.25,000 max. Rs.5 lakhs	Penalty of Rs.100 per day max. Rs.1 lakh
		DP	Fine min. Rs.10,000 max. Rs.1 lakh	Penalty of Rs.100 per day max. Rs.50,000.

Sec- tion	Offence	Who will be liable?	Punishment before amendment	Punishment after amendment
35(2)	<i>Contravention of Sec.35 (Filing annual return within 60 days)</i>	LLP	Fine min. Rs.25,000 max. Rs.5 lakhs	Penalty Rs.100 per day max. Rs.1 lakh
		DP	Fine min. Rs.10,000 max. Rs.1 lakh	Penalty Rs.100 per day max. Rs.50,000
60(4)	<i>Default in compliance of Sec.60(3) – Filing of order of NCLT approving compromise or arrangement within 30 days</i>	LLP	Fine upto Rs.1 lakh	Penalty Rs.10,000 + Rs.100 per day max. Rs.1 lakh
		DP	Fine upto Rs.1 lakh	Penalty Rs.10,000 + Rs.100 per day max. Rs.50,000
62(4)	<i>Default in compliance of Sec.62(3) – Filing order of NCLT for reconstruction or amalgamation within 30 days</i>	LLP	Fine upto Rs.50,000	Penalty Rs.10,000 + Rs.100 per day max. Rs.1 lakh
		DP	Fine upto Rs.50,000	Penalty Rs.10,000 + Rs.100 per day max. Rs.50,000
74	General penalties for offence under the Act or Rules for which no special punishment is provided	Any guilty person	Fine min. Rs.5,000 max. Rs.5 lakhs + further fine of Rs.50 per day	Penalty of Rs.5,000 + Rs.100 per day max. Rs.1 lakh

Other changes in penal provisions

Section	Offence	Who will be liable?	Punishment before amendment	Punishment after amendment
30(2)	Carrying on business of LLP for fraudulent purpose	Every person who was knowingly a party to carrying on business	Imprisonment upto 2 years and fine min. Rs. 50,000 max. Rs.5 lakhs	Imprisonment upto 5 years and fine min. Rs. 50,000 max. Rs.5 lakhs
73	Non-compliance of any order of NCLT	Whoever	Imprisonment upto 6 months and fine min. Rs.50,000.	Section omitted – To be punished under Contempt of Courts Act.
76A (new)	Failure to comply with order of AO or RD for adjudication of penalties within 90 days from date of receipt of order	LLP	--	Fine min. Rs.25,000 max. Rs.5 lakhs
		Partner or DP or any other person in default	--	a) Imprisonment upto 6 months; or b) Fine min. Rs.25,000 max. Rs.1 lakh; or c) Both
Note:	<i>In case of second or subsequent offence, amount of fine will be doubled as provided in Sec.70.</i>			

Compounding of offences (Sec.39 amended)

Who can compound?	RD or any other officer not below rank of RD authorised by CG
Which offence can be compounded?	➤ Offences punishable with fine only ➤ Similar offence committed again after 3 years <i>(will be treated as fresh offence after compounding)</i>
Amount payable	Min.: Minimum fine prescribed for offence Max.: Maximum fine prescribed for offence
Procedure	➤ Application to be made to Registrar in Form 3I who will forward to RD ➤ RD may ask to file pending returns, documents etc.
Effect of compounding	➤ No prosecution to be instituted after compounding ➤ Offender to be discharged by the court after intimation by Registrar
Failure to comply with order of RD	Max. amount of fine will be twice the amount provided in the Section
Note: No compounding was done in last decade since no mechanism was prescribed for the same.	

Compoundable offences from 1.4.2022

Sec-tion	Offence	Who will be liable?	Punishment after amendment
20	Improper use of letters “LLP”	Any person	Fine min. Rs.50,000 max. Rs.5 lakhs
34(6)	Non-compliance of sub-sections (1), (2) or (4) of Sec.34 (<i>maintenance of books of account, preparation of financials and getting audit done</i>)	LLP	Fine min. Rs.25,000 max. Rs.5 lakhs
		DP	Fine min. Rs.10,000 max. Rs.1 lakh
38(3)	Non-compliance with summons or requisition of Registrar u/s 38 without lawful excuse	Any person	Fine min. Rs.2,000 max. Rs.25,000
47(5)	Refusal to produce documents and evidence	Any person	Fine min. Rs.2,000 max. Rs.25,000 + further fine min. Rs50 max. Rs.500 per day
76A(8)	Non-compliance of order of AO for adjudication of penalty or RD in appeal	LLP	Fine min. Rs.25,000 max. Rs.5 lakhs

Compoundable offences from 1.4.2022

Sec-tion	Offence	Who will be liable?	Punishmnet after amendment
Para 17(2) of 2 nd Sch.	Contravention of para 17(1) – Conversion of firm into LLP	LLP	Fine min. Rs.10,000 max. Rs.1 lakh + further fine min. Rs.50 max. Rs.500 per day
Para 15(2) of 3 rd Sch.	Contravention of para 15(1) – Conversion of co. into LLP	LLP	Fine min. Rs.10,000 max. Rs.1 lakh + further fine min. Rs.50 max. Rs.500 per day
Para 16(2) of 4 th Sch.	Contravention of para 16(1) – Conversion of co. into LLP	LLP	Fine min. Rs.10,000 max. Rs.1 lakh + further fine min. Rs.50 max. Rs.500 per day

Compoundable offences from 1.4.2022

Section	Offence	Who will be liable?	Punishment after amendment
11(3)	Making false statement in incorporation documents	Any person	Imprisonment upto 2 years and fine min. Rs.10,000 max. Rs.5 lakhs
30(2)	Unlimited liability in case of fraud	Any person who is knowingly a party	Imprisonment upto 5 years and fine min. Rs.50,000 max. Rs.5 lakhs
37	Making false statement of material nature in any return or other document	Any person	Imprisonment upto 2 years and fine min. Rs.1 lakh max. Rs.5 lakhs
76A(9)	Failure to comply with order of AO for adjudication of penalty or RD in appeal within 90 days from receipt of order	Partner, DP or any other person	Imprisonment upto 6 months or fine min. Rs.25,000 max. Rs.1 lakh, or both.

Special courts under LLP Act 2008
(Secs.67A, 67B, 67C & 77A inserted, Sec.77 amended)

Offences to be handled

- All offences under the Act
- Can also try offences under other Acts which accused may be charged with at the same trial

Composition of special court

- Sessions judge (*if imprisonment of 3 years or more*)
- Metropolitan Magistrate or Judicial Magistrate of First Class (in case of other offences)

Who will appoint

- Central Govt. with concurrence of Chief Justice of High Court.
- Special courts under CA 2013 will be deemed to be special court under LLP Act until notified under LLP Act.

Special courts under LLP Act 2008
(Secs.67A, 67B & 67C inserted, Sec.77 amended)

Summary trial	➤ Possible for offences punishable with imprisonment upto 3 years ➤ No sentence for imprisonment for term exceeding 1 year
Jurisdiction	Area in which registered office of the LLP is situated. (If more than one, as may be specified by High Court.)
Which court can take cognizance of offence	Special court
Who can file complaint in special court	➤ Registrar; or ➤ Any other officer not below rank of Registrar authorised by CG; or ➤ Partner of LLP [Sec.439(2) of CA 2013 as applicable to LLPs]
Nature of offences under the Act	<i>Non-cognizable</i> [Sec.439(2) of CA 2013 as applicable to LLPs]
Appeal and revision	➤ Appeal will lie to High Court under Chapter XXIX of CrPC ➤ Reference and revision by High Court under Chapter XXX of CrPC

Special courts notified in Maharashtra under Companies Act 2013

Nature of offence	Existing Court	Jurisdiction	Date of Notification
Offences punishable with imprisonment of <u>2 years or more</u>	Presiding Officers at Court No.37 and 58 of the City Civil & Sessions Court, Greater Mumbai	Whole State of Maharashtra, except Pune, Ahmednagar, Kolhapur, Solapur, Satara, Sangli, Ratnagiri and Sindhudurg districts of the State of Maharashtra	18.5.2016 as amended on 28.8.2019
	Court of District Judge-I and Additional Sessions Judge, Pune	Pune, Ahmednagar, Kolhapur, Solapur, Satara, Sangli, Ratnagiri and Sindhudurg districts of the State of Maharashtra	17.7.2019 and amended on 28.8.2019

Adjudication of penalties (Sec.76A, Rule 37A inserted)

Who can appoint adjudicating officers	Central Govt by order Registrar with jurisdiction (Refer order dated 11.2.2022)
AO for Maharashtra (order dated 11.2.2022)	➤ ROC, Pune (Pune, Ahmednagar, Kolhapur, Solapur, Satara, Sangli, Ratnagiri and Sindhudurg districts of the State of Maharashtra) ➤ ROC, Mumbai (Entire State of Maharashtra except above districts)
Procedure	➤ Show cause notice ➤ Reply in e-mode within 15 to 30 days – AO can extend by 15 days. Can request for personal hearing. ➤ AO can send notice within 10 days for physical presence ➤ Order to be passed within 30 days (or 90 days of issue of notice)- Delay to be mentioned ➤ Copy to be sent to LLP, partner, other person, RD and also on website
Cases when no penalty is leviable	Non-compliance of Sec.34(3) (<i>filing financials</i>) or Sec.35(1) (<i>filing annual return</i>) if such default has been rectified either prior to or within 30 days of issue of notice by adjudicating officer

Adjudication of penalties (Sec.76A, Rule 37A inserted)

Max. penalty in case of small LLP or start-up LLP	One-half of penalty specified – Max. Rs.1 lakh for LLP and Rs.50,000 for every partner or DP or any other person.
Powers of Adjudicating Officer	➤ To levy penalty ➤ To direct to rectify default
Compounding	Penalty cannot be compounded
Punishment for not complying with order of AO	➤ LLP: Fine min. Rs.25,000 max. Rs.5 lakhs ➤ Partner, DP or any other person in default: a) <i>Imprisonment upto 6 months; or</i> b) <i>Fine min. Rs.25,000 max. Rs.1 lakh; or</i> c) <i>Both</i>

Appeal to RD against order of Adjudicating Officer
(Sec.76A, Rule 37B, 37C, 37D inserted)

Appeal against order of AO to be filed with	Regional Director
Time limit for filing appeal	60 days (<i>can be extended by 30 days</i>) from date of receipt of copy of order of AO
Form of appeal and fee	➤ Form 33 LLP ADJ ➤ Fee Rs.2,500 (Rs.1,000 for small LLPs)
Procedure	➤ Registration Sr. No. to be allotted ➤ RD can ask to remove defects, if any, within 14 days (<i>can be extended by 14 days</i>) ➤ RD to send copy to AO to submit reply within 21 days (<i>can be extended by 21 days</i>) ➤ Copy of reply to be submitted to appellant ➤ RD to give min. 30 days notice for personal hearing ➤ Copy of order to be sent to AO, appellant and CG

Appeal to RD against order of Adjudicating Officer
(Sec.76A, Rule 37B, 37C, 37D inserted)

Powers of RD	To confirm, modify or set aside order of AO
Punishment for not complying with order of RD	➤ LLP: Fine min. Rs.25,000 max. Rs.5 lakhs ➤ Partner, DP or any other person in default: a) <i>Imprisonment upto 6 months; or</i> b) <i>Fine min. Rs.25,000 max. Rs.1 lakh; or</i> c) <i>Both</i>
Second appeal	No provision for appeal against order of RD (<i>But writ jurisdiction of High Court under Article 226 can be invoked</i>)

Registration offices (Sec.68A inserted)

Who will notify	➤ Central Government ➤ For exercising powers and functions under the Act and for registration of LLPs
Who may be appointed	➤ Registrars ➤ Additional Registrars ➤ Joint Registrars ➤ Deputy Registrars ➤ Assistant Registrars
Terms & conditions of service	As may be prescribed
Way forward	Rules to be notified by the Government

Additional fee reduced
(Sec.69 and Annexure-A to Rules amended)

Applicable to all documents or returns to be filed after due date

	Provision before amendment	Provision after amendment
Further period allowed for filing with additional fee without penal provisions	300 days from due date	NIL
Further period allowed for filing with additional fee with penal provisions	No limit	No limit
Additional fee payable	Rs.100 per day for period of delay	Refer Annexure-A of LLP Rules 2009

**Additional fee payable from 1.4.2022
(Annexure-A to LLP Rules 2009)**

S.No.	Period of delay	Small LLPs	Other than small LLPs
(a)	Upto 15 days	One time	One time
(b)	More than 15 days and upto 30 days	2 times of normal filing fees	4 times of normal filing fees
(c)	More than 30 days and upto 60 days	4 times of normal filing fees	8 times of normal filing fees
(d)	More than 60 days and upto 90 days	6 times of normal filing fees	12 times of normal filing fees
(e)	More than 90 days and upto 180 days	10 times of normal filing fees	20 times of normal filing fees
(f)	More than 180 days and upto 360 days	15 times of normal filing fees	30 times of normal filing fees
(g)	Beyond 360 days	25 times of normal filing fees	50 times of normal filing fees

Provisions relating to name of LLP

Sec./ Rule	Subject matter	Provision before amendment	Provision after amendment
15(2)(b)	In the opinion of CG name of LLP should not be	identical or too nearly resembles to that of any other partnership firm or limited liability partnership or body corporate or a registered trade mark, or a trade mark which is the subject matter of an application for registration of any other person under the Trade Marks Act, 1999 (47 of 1999).	identical or too nearly resembles to that of any other limited liability partnership or a company or a registered trade mark of any other person under the Trade Marks Act, 1999 (47 of 1999).
Sec.17, Rule 19A	Rectification of name of LLP		To be done within 3 months of direction from CG. In case of non-compliance system generated new name will be allotted to the LLP which will be as under: The letters ORDNC year of passing order, serial no., existing LLPIN

Provisions relating to name of LLP

Sec./ Rule	Subject matter	Provision before amendment	Provision after amendment
18	Application to Registrar for direction to change name		Sec.18 omitted – Power of Registrar taken away.
Rule 19			Application to be made to RD by proprietor of TM in Form 23 for change of name

Small LLP

[Sec.2(1)(ta)]

Definition	➤ Contribution upto Rs.25 lakhs (can be increased upto Rs.5 crores) and ➤ Turnover for immediately preceding financial year upto Rs.40 lakhs (can be increased upto Rs.50 crores); or ➤ Meeting other prescribed requirements
Benefits of small LLP	➤ Lower filing fee ➤ Lower additional fee ➤ One-half penalty
Way forward	Further relaxations may be notified.

Start-up LLP

**[Expl. to
Sec.76A(3)(a)
added]**

Definition	LLP recognised under notifications issued by CG from time to time
Benefits of start-up LLP	One-half penalty
Way forward	Further relaxations may be notified.

**Accounting
and auditing
standards
(Sec.34A)**

**LLPs for which
mandatory**

For a class or classes of LLPs

Who will notify?

CG in consultation with NFRA as recommended
by ICAI

Way forward

Rules to be notified

**Appeal to
NCLAT
against order
of NCLT
(Sec.72
amended)**

Appeal against	Any order of NCLT <i>(except order passed with consent of parties)</i>
Time limit for filing appeal	➤ 60 days from receipt of copy of order of NCLT ➤ Further period of 60 days may be allowed by NCLAT
Applicable Rules	NCLAT Rules 2016 <i>[Refer Rule 5(3) of LLP Rules 2009]</i>
Form of appeal and fee	NCAT-I
Powers of NCLAT	To confirm, modify or set aside order of NCLT after hearing the parties.
Copy of order to be sent by NCLAT to	➤ NCLT ➤ Parties to appeal

Business of LLP

Date	Development
6/3/2019	MCA issued OM restricting manufacturing for LLPs since not covered in definition of 'business'
8/4/2019	ICSI made representation to MCA for withdrawal of circular
17/4/2019	MCA withdrew OM dated 6/8/2019

Sec.2(1))(e): "business" includes every trade, profession, service and occupation except any activity which the Central Government may, by notification, exclude;

Way forward: Govt. may put restrictions on large manufacturing LLPs.

Other amendments

Removal of Difficulties Order	Sec.80 amended	<i>Power given to CG to issue Order for Removal of Difficulties within 3 years of commencement of 2021 Amendment Act</i>
CLB (transitional provisions)	Sec.81 omitted	NCLT has been constituted and hence Sec.81 being irrelevant omitted.
Definition of Regional Director	Sec.2	Definition inserted
Merger with a company	Sec.62	LLP not to be amalgamated with a company.
Reference to CA 1956 omitted	Whole Act	Reference to Companies Act 1956 replaced by Companies Act 2013 in the whole Act.

**Other
amendments
to Rules (Notif.
Dated 11.2.2022)**

PAN and TAN	Rule 11	<i>To be mentioned in Certificate of Registration</i>
Signing of financials	Rule 24	In case of CIRP can be signed by RP/IRP.
Signing of annual return in Form 11	Rule 25	In case of CIRP or liquidation can be signed by RP/IRP/Administrator if turnover upto Rs.5 crores or contribution upto Rs.50 lakhs
Notice of shifting or closure of regd. office		➤ To be given in /form 28 ➤ Form 29 omitted
Additional information to Registrar	Rule 36	To be given in Form 32
Forms		Web based forms introduced instead of PDFs.
Max. No. of DPs		Max. n. of DPs without DPIN increased from 2 to 5

**Provisions of Companies Act 2013 applicable to LLPs
with some modifications (Notification dated 11.2.2022)**

Sec.	Subject matter
60	Significant Beneficial Owners
164	Disqualification for appointment of director
165	Number of directorships (No person to be DP in more than 20 LLPs)
167	Vacation of office of director
206(5)	Power of CG to direct inspection of books of co.
207(3)	Power of Inspector in inspection of books of co.
252	<i>Appeal to NCLT against order of ROC to remove name of co. (within 20 years)</i>
439	<i>Offences to be non-cognizable</i>
Way forward: Rules to be notified.	

Any Questions...
Just Ask!





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