

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

### **Introduction**

The Limited Liability Partnership Bill, 2008 was passed by the Indian Parliament and it received President's assent on January 7, 2009. However, the Act is yet to be notified in the official gazette. The draft rules and forms are also ready. This form of business model not only has the teeth to bring more business efficiency but it also has the potential in enlarging the ambit of work for professionals.

### **Background**

With the growth of the Indian economy, the role played by its entrepreneurs as well as its technical and professional manpower has been acknowledged internationally. It is felt opportune that entrepreneurship, knowledge and risk capital combine to provide a further impetus to India's economic growth. In this background, a need has been felt for a new corporate form of business that would provide an alternative to the traditional partnership.

The Limited Liability Partnership (LLP) is viewed as an alternative corporate business vehicle that provides the benefits of limited liability but allows its members the flexibility of organizing their internal structure as a partnership based on a mutually arrived agreement. The LLP form would enable entrepreneurs, professionals and enterprises providing services of any kind or engaged in scientific and technical disciplines, to form commercially efficient vehicles suited to their requirements. Owing to flexibility in its structure and operation, the LLP would also be a suitable vehicle for small enterprises and for investment by venture capital. The enactment of this bill would do away with the restriction of 20 partners in a firm and it is proposed to make the limit 100 and even unlimited in case of professional services firm.

This innovative business format is expected to bring Accountants, Lawyers, Engineers all come under one roof and create colossal professional services firm. The need for such form of business model in India is evident by the fact that many international firms like PricewaterhouseCoopers (PwC), E&Y, Cushman & Wakefield and others operate as LLPs in countries like US, UK and Germany where such form of business model already exists. However, in India these firms operate as partnerships and private companies in absence LLP business model in India.

### **BASICS OF LIMITED LIABILITY PARTNERSHIP**

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January, 2009

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1. A LLP shall be a body corporate and it shall be an entity separate from that of its partners. It shall have perpetual succession
2. Any individual or body corporate may be a partner in a LLP and a LLP must have at least two partners
3. Every LLP shall have at least two **designated partners** who are individuals and at least one of them shall be resident in India. The designated partners may be compared with the Directors and Company Secretary of a Company because he shall be—
  - (a) responsible for the doing of all acts, matters and things as are required to be done by the limited liability partnership in respect of compliance of the provisions of this Act including filing of any document, return, statement and the like report pursuant to the provisions of this Act and as may be specified in the limited liability partnership agreement; and
  - (b) liable to all penalties imposed on the limited liability partnership for any contravention of those provisions
4. Prior consent in **Form 9** is required for appointment of a designated partner and his appointment have to be notified to the Registrar within 30 days of appointment in **Form 5**. All appointments / cessions / change in particulars also needs to be intimated in Form 5
5. Each designated partner shall apply for a Designated Partner Identification Number (DPIN) in **Form 7**. The provisions of Sections 266A to 266G (both inclusive) of the Companies Act, 1956 shall apply *mutatis mutandis* for the said purpose. DIN allotted under the Companies Act, 1956 shall be deemed DPIN, however **Form 25** needs to be filed. The Designated Partner needs to intimate his DPIN to the LLP in **Form 26**. Any change in DIN / DPIN details needs to be intimated in **Form 10**
6. The incorporation of a LLP is quite similar to that of a private Limited Company under the Companies Act, 1956. The incorporation document should be subscribed by at least 2 persons and the same should be filed with the Registrar in **Form 2**. Also, **Form 3** should be filed with Form 2 which shall be signed by any Advocate, CS, CA or ICWA who was involved in the incorporation of the LLP together with any 1 person who has subscribed to the incorporation document. This Form 3 is very similar to Form 1 under the Companies Act, 1956. After the incorporation document with the compliance form is filed with the RoC, he shall issue the CoI within 14 days.
7. The mutual rights and duties of partners of an LLP inter se and those of the LLP and its partners shall be governed by an agreement between partners or between the LLP and the partners subject to the provisions of the Act. **Form 4** needs to be filed with the Registrar within 30 days from the date of creation of the LLP agreement or any modification thereof.

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8. In the absence of agreement as to any matter, the mutual rights and duties of the partners and the mutual rights and duties of the limited liability partnership and the partners shall be determined by the provisions relating to that matter as are set out in the First Schedule
9. The contributions made by the partners in a LLP must be valued by a PCA / PCWA
10. Notice to the Registrar about induction or vacation of the office of a partner has to be done
11. However, no person may be introduced as a partner without the consent of all the existing partners

LIMITED LIABILITY
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1. Every partner of a limited liability partnership is, for the purpose of the business of the limited liability partnership, the **agent** of the limited liability partnership, but **not** of other partners
2. An **obligation of the limited liability partnership** whether arising in contract or otherwise, shall be solely the obligation of the limited liability partnership.
3. The liabilities of the limited liability partnership shall be met out of the property of the limited liability partnership.
4. A partner is not personally liable, directly or indirectly for an obligation solely by reason of being a partner of the limited liability partnership.
5. The personal liability of a partner is not affected 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 of the LLP
6. In case of **fraud**, the LLP and the partners involved in that fraud shall have **unlimited liability** unless it is established by the limited liability partnership or a partner that such act was without knowledge
7. 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

Others
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8. **Whistle Blower** mechanism has been introduced in the bill

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9. A creditor of a limited liability partnership, which extends credit or otherwise acts in reliance on the LLP agreement, without notice of any compromise between partners, may enforce the original obligation against such partner
10. The provisions for maintenance of accounts are somewhat similar with that of Companies; however, extensive rules have been framed **Rule 24 and 25**. It deals with appointment of Auditors, filing of Statement of Account and Solvency in **Form 8** within 6 months from the end of FY, filing of Annual Return in **Form 11** within 60 days from the end of FY certified by a Company Secretary. Under **Rule 36 (5)**, the Registrar can call for clarifications on the documents and e-forms filed with the Registrar. The time allowed shall be 30 days similar to what is provided under Regulation 17 of the Companies Regulation, 1956
11. The rights of a partner to a share of the profits and losses of the limited liability partnership and to receive distributions in accordance with the limited liability partnership agreement are transferable either wholly or in part and such transfer by itself does not cause dissolution of the LLP
12. Partnership firms, Private Limited Companies and Public Limited Companies can convert themselves into LLPs in accordance with 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> schedule respectively, read with Chapter X
13. 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

#### **Author's Concern-**

1. When will the LLP Act, 2008 be notified together with the draft rules, so as to allow formation of LLPs in India?
2. On conversion of a firm / company into a LLP what will be the **Stamp Duty implication?** Stamp Duty is a state subject and the decision of the states in this regard would highly impact the success of this piece of legislation
3. What will the next Finance Bill bring for us? Will it enable the taxman to **tax** the LLP as a whole or the partners individually? Ideally, Partners should be taxed because they don't always bring equal contribution to a firm. The LLP should be given a complete **pass thru status**
4. Similarly **Capital Gains tax** implication has to be made clear
5. Whether the **Advocates Act, 1961** would allow law firms to convert themselves into LLPs? This would again impact the success of this piece of legislation

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