

Frequently Asked Questions (FAQs) on Limited Liability Partnership Act, 2008



**Corporate Laws & Corporate Governance Committee
The Institute of Chartered Accountants of India**
(Set up by an Act of Parliament)
New Delhi

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on
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E-mail : clcgc@icai.in

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Foreword

The Limited Liability Partnership (LLP) Act, 2008 was enacted by the Parliament of India to introduce and legally sanction the concept of LLP in India, unlike the general partnerships in India. The Act was notified on 31st March 2009. It provides an alternative to the traditional partnership firm with unlimited liability.

By incorporating an LLP, its members can avail the benefit of limited liability while at the same time having the flexibility of organizing their internal management on the basis of a mutually-arrived agreement, as is the case in a partnership firm.

Over the years there have been many amendments and changes brought in by the Government in the Act and Rules, and this form of business was also well received amongst the stakeholders, therefore, guidance was required in this area.

In this regard, the Institute of Chartered Accountants of India (ICAI) through its Corporate Laws & Corporate Governance Committee (CL&CGC) is bringing this “Frequently Asked Questions (FAQs) on Limited Liability Partnership Act, 2008” to provide detailed guidance in question answer form on the procedural aspects of this integrated form for clear interpretation and understanding of the Act and changes brought in the Act.

I appreciate the Corporate Laws & Corporate Governance Committee (CL&CGC) in bringing this publication which I hope will be very useful for our members. I extend my sincere appreciation to CA. Chandrashekhar V. Chitale, Chairman, CA. Durgesh Kabra, Vice-Chairman and other members of the Corporate Laws & Corporate Governance Committee to bring out this important publication at this point of time.

I am sure that the members and other interested readers would find the publication immensely useful.

CA. Atul Kumar Gupta
President, ICAI

Date: 09th January, 2021

Preface

Limited Liability Partnership is considered to be easier to set up, it is comparatively hassle-free in the day to day operations, has significantly lower burdensome compliance requirements and costs, and therefore many see it as advantageous to begin their organization in this manner. Moreover, there are various advantages of incorporating an LLP in India such as no minimum contribution, no limit on maximum number of partners, no compulsory audit required unless there is a specific criterion.

To facilitate the understanding, interpretation and relaxations given in COVID-19 under the provisions of Limited Liability Partnership (LLP) Act, 2008, the Corporate Laws & Corporate Governance Committee decided to bring out a publication on the Frequently Asked Questions on Limited Liability Partnership Act, 2008.

The publication has been designed in a question and answer format to assist our members and fellow professionals in mitigating various queries relating to the Limited Liability Partnership (LLP) Act, 2008.

In this connection we take this opportunity in thanking the President of ICAI, CA. Atul Kumar Gupta and Vice President, CA. Nihar Niranjana Jambusaria for bringing out this publication. We profoundly thank CA. Sarika Singhal, Secretary to the Committee and team members Ms Seema Jangid, CA Deepa Agarwal and CA Nikita Aggarwal to prepare this publication.

To enhance such benefits Frequently Asked Questions have been prepared to give a detailed view on the LLP Act which will enlighten the knowledge of professionals and the members of the profession, industries and other stakeholders will find the publication immensely useful.

CA. Chandrashekhar Vasant Chitale
Chairman,
Corporate Laws & Corporate
Governance Committee, ICAI

CA. Durgesh Kumar Kabra
Vice-Chairman,
Corporate Laws & Corporate
Governance Committee, ICAI

Date: 28th December, 2020

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Glossary

DPIN	Designated Partnership Identification Number
DIN	Director Identification Number
CG	Central Government
LLPIN	Limited liability Partnership Identification Number
MCA	Ministry of Corporate Affairs
ROC	Registrar of Companies
LLP	Limited Liability Partnership
FLLP	Foreign Limited Liability Partnership
STP	Straight Through Process
SRN	Service Request Number
C & A	Compromise & Arrangement
DSC	Digital Signature Certificate

Chapter-I

Definitions

Q1. What is a Limited Liability Partnership?

A1. A "Limited Liability Partnership" is a partnership formed and registered under the Limited Liability Partnership Act, 2008.

Q2. What is a Foreign Limited Liability Partnership?

A2. A "Foreign Limited Liability Partnership" means a limited liability partnership formed, incorporated or registered outside India which establishes a place of business within India.

Q3. What is meant by the term "DPIN"?

A3. DPIN means an identification number which the CG may allot to any individual, intending to be appointed as designated partner of a LLP for the purpose of his identification as such, and includes Director Identification Number (DIN) issued pursuant to provisions of Companies Act and Rules thereunder.

Q4. Who acts as an "officer" under LLP Act, 2008?

A4. Any partner, designated partner, employee of the LLP, any person in accordance with whose directions or instructions the partners of the LLP have been accustomed to act and any person authorized to accept any service on behalf of a foreign LLP and partners of such LLP acts/ classified as an officer under LLP Act, 2008.

Q5. What is "Limited Liability Partnership Agreement"?

A5. Limited Liability Partnership Agreement means any written agreement between the partners of the LLP or between the LLP and its partner which determines the mutual rights and duties of the partners and their rights and duties in relation to that LLP.

Q6. What is meant by a body corporate?

A6. Body corporate means the same as defined in section 3 of the Companies Act, 1956 (1 of 1956) and it includes--

- a limited liability partnership registered under the Act;

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- a limited liability partnership incorporated outside India; and
- a company incorporated outside India, but does not include--
- a corporation sole;
- a co-operative society registered under any law for the time being in force; and
- any other body corporate (not being a company as defined in section 3 of the Companies Act, 1956 (1 of 1956) or a limited liability partnership as defined in this Act), which the Central Government may, by notification in the Official Gazette, specify in this behalf.

Chapter-II Forms for LLP

The various forms required in relation to LLP

Description	e-Form
Form for Incorporation of Limited Liability Partnership	Form FiLLiP
Details in respect of designated partners and partners of Limited Liability Partnership	Form Addendum to FiLLiP
Information with regard to limited liability partnership agreement and changes, if any, made therein	Form 3
Notice of appointment, cessation, change in name/ address/designation of a designated partner or partner. and consent to become a partner/designated partner	Form 4
Notice of appointment, cessation, change in particulars of a partners	Form 4A
Notice for change of name	Form 5
Statement of Account & Solvency	Form 8
Annual Return of Limited Liability Partnership (LLP)	Form 11
Form for intimating other address for service of documents	Form 12
Notice for change of place of registered office	Form 15
Application and statement for conversion of a firm into Limited Liability Partnership (LLP)	Form 17
Application and Statement for conversion of a private company/ unlisted public company into limited liability partnership (LLP)	Form 18
Notice of intimation of Order of Court/ Tribunal/CLB/ Central Government to the Registrar	Form 22
Application for direction to Limited Liability Partnership (LLP) to change its name to the Registrar	Form 23

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Application to the Registrar for striking off name	Form 24
Application for reservation/ renewal of name by a Foreign Limited Liability Partnership (FLLP) or Foreign Company	Form 25
Form for registration of particulars by Foreign Limited Liability Partnership (FLLP)	Form 27
Return of alteration in the incorporation document or other instrument constituting or defining the constitution; or the registered or principal office; or the partner or designated partner of limited liability partnership incorporated or registered outside India.	Form 28
Notice of (A) alteration in the certificate of incorporation or registration; (B) alteration in names and addresses of any of the persons authorised to accept service on behalf of a foreign limited liability partnership (FLLP) (C) alteration in the principal place of business in India of FLLP (D) cessation to have a place of business in India	Form 29
Application for compounding of an offence under the Act	Form 31
Form for filing addendum for rectification of defects or incompleteness	Form 32

Firm Conversion Form

Description	e-Form
Form for intimating to Registrar of Firms about conversion of the firm into limited liability partnership (LLP). (To be filled in physical form and submitted to Registrar of Firms)	Form 14

DIN Forms

Description	e-Form
Application for allotment of Director Identification Number	Form DIR-3
Intimation of change in particulars of Director to be given to the Central Government	Form DIR-6

Chapter-III

Partners of an LLP

Q7. What are the rights of an LLP?

A7. LLP is a legal entity separate from that of its partners having perpetual succession. Therefore, any change in the partners of a limited liability partnership shall not affect the existence, rights or liabilities of the limited liability partnership.

Q8. Who can become a partner in LLP?

A8. After incorporation of an LLP, the persons who subscribed their names to the incorporation document shall be its partners and any other person may become a partner of the limited liability partnership by and in accordance with the limited liability partnership agreement.

Q9. What are the qualifications to become a partner in LLP?

A9. As per Section 5 of the LLP Act, 2008, any individual or body corporate can act as a partner in the LLP. Further, if such partner is found to be of unsound mind or is an undischarged insolvent or has applied to be adjudicated as an insolvent and his application is pending, then the individual cannot act as a partner in LLP.

Q10. Who are not eligible to be appointed as a Designated Partner?

A10. A person is not eligible to be appointed as a designated partner if he:

- has at any time within the preceding five years has been adjudged insolvent; or
- suspends, or has at any time within the preceding five years suspended payment to his creditors and has not at any time within the preceding five years made, a composition with them; or
- has been convicted by a Court for any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than six months; or
- has been convicted by a Court for an offence involving section 30 of the Act.

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Q11. How many minimum numbers of partners are required to incorporate a LLP?

A11. Every LLP is required to have at least two persons as partners to incorporate a LLP.

Q12. What is the maximum prescribed limit on the number of partners in a LLP?

A12. There is no maximum limit on the number of partners in a LLP.

Q13. What are the consequences if the limit for minimum number of partners of the LLP has not been maintained?

A13. According to section 6(2) of the LLP Act, 2008, if at any time the limit for minimum number of partners of the LLP has not been maintained and the LLP carries on the business for more than six months while the number is so reduced, then the person who is the only partner of the LLP during the time that it so carries on business after those six months and has the knowledge of fact that he is carrying the business alone, shall be personally liable for the obligations of LLP incurred during that period.

Q14. What is the minimum number of Designated Partner that is prescribed under LLP Act, 2008?

A14. Every Limited Liability Partnership shall have at least two individuals as designated partners among which one of them shall be a resident in India i.e. a person who has stayed in India for a period, not less than 182 days during the immediately preceding year.

Q15. Who can become a designated partner?

A15. There are two conditions under which a person can be designated partner which is as follows:-

- if the incorporation document specifies, persons who shall be designated partners on incorporation; or it is stated that each partner of LLP shall act as designated partner from time to time.
- If the LLP agreement mentions the partner who shall become or cease to become designated partner

Q16. Can a Designated Partner and Partner be the same person?

A16. Yes, the partner in a LLP can be designated as "Designated Partner"

in the LLP. However, such designated partner needs to be an individual.

Q17. Is it mandatory for a Designated Partner to hold DPIN?

A17. Yes, it is mandatory for every Designated Partner to obtain DPIN from CG by making an application electronically in form DIR-3.

Q18. Is it necessary to obtain DIN under the Companies Act, 2013 and DPIN under the LLP Act, 2008?

A18. No, where a person is already holding a DIN, he is not required to make a separate application under DIR-3 for obtaining DPIN and such DIN shall be sufficient for being appointed as a Designated Partner under the LLP Act, 2008.

Q19. Can a person continue to hold both DIN and DPIN?

A19. If a person holds both DIN and DPIN, his DPIN shall stand cancelled and DIN shall be used as DPIN for the purpose of the LLP Act.

Q20. Whether Hindu Undivided Family (HUF) /its Karta can become partner/designated Partner in LLP?¹

A20. No, as per section 5, of LLP Act, 2008 only an individual or body corporate may be a partner in a Limited Liability Partnership. A HUF cannot be treated as a body corporate for the purposes of LLP Act, 2008. Therefore, a HUF or its Karta cannot become designated partner in LLP.

Q21. Whether a Trust/Trustee can become a partner in the LLP?

A21. MCA² has clarified that a trust or a trustee representing a trust in the case of "Real Estate Investment Trust" (REIT) or "Infrastructure Investment Trust" (InvITs) or such other trusts set up under the regulations prescribed under the Securities & Exchange Board of India Act, 1992, can become a partner in an LLP.

It has been further stated that for the purposes of these trusts it is not barred for a trustee, being a body corporate, to hold partnership in an LLP in its name without the addition of the statement that it is a trustee.

¹ General Circular No. 13/2013

² General circular No. 37/2014

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Q22. What are the liabilities of a Designated Partner under the LLP Act, 2008?

A22. A designated partner shall be:

- 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 the Act including filing of any document, return, statement and the like report pursuant to the provisions of the Act and as may be specified in the limited liability partnership agreement; and
- liable to all penalties imposed on the limited liability partnership for any contravention of those provisions.

Further, Designated Partners shall also be responsible for all the regulatory and legal compliances, apart from their liability as partners.

Q23. What are the consequences if the criteria for minimum number of Designated Partner that is prescribed under LLP Act, 2008 is not fulfilled?

A23. In that scenario, the limited liability partnership and its every partner shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to five lakh rupees.

Q24. What if no designated partner is appointed, or the number of designated partners falls below two?

A24. If no designated partner is appointed, or if at any time there is only one designated partner, each partner shall be deemed to be a designated partner.

Q25. Within how many days, the vacancy arising for the position of Designated Director must be filled by the LLP?

A25. An LLP may appoint a designated partner within 30 days of the vacancy arising for any reasons.

Q26. How will the mutual rights and duties of partners and LLP be governed in case of absence of agreement to any matter?

A26. If there is absence of agreement to any matter, the mutual rights and duties of the partners and those of the partners and the LLP shall be determined by the provisions relating to the matters as are set-out in the First Schedule.

Q27. Whether an agreement in writing, made before the incorporation of LLP will be binding on the partners of the LLP?

A27. Yes, an agreement in writing made before the incorporation of LLP between the persons who subscribe their names to the incorporation document may impose obligation on the LLP, if such agreement is ratified by all the partners immediately after incorporation and the same is filed with Registrar in Form-3 within 30 days of incorporation of the LLP.

Q28. If all the partners of the LLP are body corporate, then who will act as designated partner?

A28. In such a case, where all the partners of the LLP are body corporate or in which one or more partners are individuals and bodies corporate, at least two individuals who are partners of such limited liability partnership or nominees of such body corporate shall act as designated partners.

Q29. In the event of change of particulars filed in form DIR-3, how it shall be communicated to the relevant authority?

A29. An application in Form DIR-6 has to be filed to intimate the changes in particulars of the person, to Central Government within 30 days of such change in particulars.

Q30. How can a person cease to be a partner from the partnership of LLP?

A30. An existing partner may cease to be a partner in the LLP in accordance with the agreement with the other partners, or in absence of such agreement by giving a notice of not less than 30 days to the other partners of his intention to resign as partner.

Further, the LLP shall in turn inform ROC about the cessation of partnership interest by filing Form-4.

Q31. Under what circumstances, can a person cease to be a partner of an LLP?

A31. A person shall cease to be a partner of a limited liability partnership—

- on his death or dissolution of the limited liability partnership; or
- if he is declared to be of unsound mind by a competent court; or
- if he has applied to be adjudged as an insolvent or declared as an insolvent.

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Q32. Does the change in partners of the LLP affect the existence of LLP?

A32. Any change in the partners of the LLP shall not affect the existence, rights or liabilities of the LLP. A Limited Liability Partnership is a body corporate and is a legal entity separate from that of its partner and have a perpetual succession.

Q33. What is the extent to which the partner of a LLP is liable?

A33. The partner of a LLP shall be liable for his own wrongful act or omission, but not for the wrongful acts or omission of any other partner of the LLP.

Q34. What are the obligations of a person who has ceased to be a partner i.e former partner of a LLP?

A34. The former partner shall be responsible for any obligation to the limited liability partnership or to the other partners or to any other person which he incurred while being a partner.

Further, the former partner or a person entitled to his share in consequence of the death or insolvency of the former partner shall not have any right to interfere in the management of the limited liability partnership

Q35. What are the responsibilities of an LLP towards a former partner?

A35. Where a partner of LLP ceases to be a partner, unless otherwise provided in the limited liability partnership agreement, the former partner or a person entitled to his share in consequence of the death or insolvency of the former partner, shall be entitled to receive from the limited liability partnership—

- an amount equal to the capital contribution of the former partner actually made to the limited liability partnership; and
- his right to share in the accumulated profits of the limited liability partnership,

Q36. What shall be done, if a partner of an LLP changes his name or address?

A36. Every partner who changes his name or address shall inform the LLP within a period of fifteen days of such change.

Further, the LLP shall file a notice with the Registrar within thirty days of such change.

Q37. What are the important points that the notice to the Registrar specifies, with regard to the change of name or address of partner or cessation of partner in LLP?

A37. The notice filed with the Registrar-

- shall be in such form and accompanied by such fees as may be prescribed;
- shall be signed by the designated partner of the limited liability partnership and authenticated in a manner as may be prescribed; and
- if it relates to an incoming partner, shall contain a statement by such partner that he consents to becoming a partner, signed by him and authenticated in the manner as may be prescribed.

Q38. Can a partner himself file the notice with the Registrar?

A38. Yes, any person who ceases to be a partner of a LLP, may himself file with the Registrar the notice if he has reasonable cause to believe that the LLP may not file the notice with the Registrar and in case of any such notice filed by a partner, the Registrar shall obtain a confirmation to this effect from the LLP unless LLP has also filed such notice.

Further, if no confirmation is given by the LLP within fifteen days, the Registrar shall register the notice made by a person ceasing to be a partner.

Q39. What are the consequences, if the provision for filing notice to the Registrar within the time period of 30days is not followed for cessation/change of name or address of partner?

A39. If the LLP contravenes such provision, the limited liability partnership and every designated partner of the limited liability partnership shall be punishable with fine which shall not be less than two thousand rupees but which may extend to twenty-five thousand rupees.

Q40. What are the consequences, if the partner does not inform the LLP regarding change of name/address?

A40. If any partner contravenes such provisions, the partner shall be

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punishable with fine which shall not be less than two thousand rupees but which may extend to twenty-five thousand rupees.

Q41. Can a Partner act as an agent?

A41. Yes, every partner of a LLP is, for the purpose of the business of the limited liability partnership, the agent of the limited liability partnership, but not of other partners.

Q42. Under what circumstances, the LLP is not responsible for the acts of a partner?

A42. An LLP shall not be responsible for anything done by a partner in dealing with a person if-

- the partner in fact has no authority to act for the limited liability partnership in doing a particular act; and
- the person knows that he has no authority or does not know or believe him to be a partner of the limited liability partnership.

Also, a partner shall not be personally liable for the wrongful act or omission of any other partner of the limited liability partnership.

Q43. Under what circumstances, the LLP will be responsible for the acts of a partner?

A43. The LLP shall be 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 in the course of the business of the limited liability partnership or with its authority.

Further, in case of an obligation of the LLP whether arising in contract or otherwise shall be solely the obligation of LLP where the liabilities shall be met out of the property of LLP

Q44. Who is known as “Partner by holding out”?

A44. A partner by holding out is a person who is actually not a partner in the LLP, but by words spoken or written or by conduct, represents himself, or knowingly permits himself to be represented as a partner in the LLP.

Any such partner is liable to any person who has faith of any such representation given credit to the LLP, 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.

Q45. Whether the rights of the partner to share the profits and losses of the LLP transferable?

A45. Yes, the rights of the partners to a share of the profits and losses of the LLP and to receive distributions in accordance with the LLP agreement are transferable either wholly or in part. However, by virtue of transferring the right, the other person i.e. the transferee does not get entitled to participate in the management or conduct of the activities of the LLP.

Chapter-IV

Incorporation and Matters Incidental Thereeto

Q46. Can a Limited Liability Partnership be incorporated for non-profitable purpose?

A46. No, a LLP can be formed only for carrying lawful business with a view to earn profit by associating two or more persons who shall subscribe their names to an Incorporation document.

Q47. What is the procedure to incorporate a LLP?

A47. The procedure to incorporate a LLP are as follow:

- Application for Digital Signature

All designated partners of the proposed LLP shall obtain “Designated Partner Identification Number (DPIN)”. You need to file eForm DIR-3 in order to obtain DIN or DPIN. In case you already have a DIN (Director Identification Number), the same can be used as a DPIN.

The application for allotment of DIN has to be made in Form DIR-3. The form shall be signed by a Company Secretary in full-time employment of the company or by the Managing Director/Director/CEO/CFO of the existing company in which the applicant shall be appointed as a director.

- Reservation of Name

LLP-RUN (Limited Liability Partnership-Reserve Unique Name) is filed for the reservation of name of proposed LLP which shall be processed by the Central Registration Centre under Non-STP. The name in the form shall be checked with names of existing companies/LLPs. The registrar will approve the name only if the name is not undesirable in the opinion of the Central Government and does not resemble any existing partnership firm or an LLP or a body corporate or a trademark. The form RUN-LLP has to be accompanied with fees as prescribed which

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may be either approved/rejected by the registrar. A re-submission of the form shall be allowed to be made within 15 days for rectifying the defects. There is a provision to provide for 2 proposed names of the LLP.

- Incorporation of LLP
 - a. The form used for incorporation is FiLLiP (Form for incorporation of Limited Liability Partnership) which shall be filed with the Registrar who has a jurisdiction over the state in which the registered office of the LLP is situated. The form will be an integrated form.
 - b. Fees as prescribed shall be paid.
 - c. The form also provides for applying for allotment of DPIN, if an individual who is to be appointed as a designated partner does not have a DPIN or DIN.
 - d. The application for allotment shall be allowed to be made by two individuals only.
 - e. The application for reservation may be made through FiLLiP too.
 - f. If the name that is applied for is approved, then this approved and reserved name shall be filled as the proposed name of the LLP
- Limited Liability Partnership Agreement

LLP agreement governs the mutual rights and duties amongst the partners and between the LLP and its partners.

 - a. It must be filed in form 3 online on MCA Portal.
 - b. Form 3 for LLP agreement has to be filed within 30 days of the date of incorporation.
 - c. It has to be printed on Stamp Paper. The value of Stamp Paper is different for every state.

Q48. What does an incorporation document contain?

A48. The incorporation document contains: -

- be in a form as may be prescribed;

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- state the name of the limited liability partnership;
- state the proposed business of the limited liability partnership;
- state the address of the registered office of the limited liability partnership;
- state the name and address of each of the persons who are to be partners of the limited liability partnership on incorporation;
- state the name and address of the persons who are to be designated partners of the limited liability partnership on incorporation; (g) contain such other information concerning the proposed limited liability partnership as may be prescribed.

Q49. What is Form RUN-LLP?

A49. Form RUN-LLP is a web-based form that is available at MCA official website for filing application for:

- reservation of name of proposed LLP or
- name to which a LLP proposes to change its name.

Q50. What happens if the intending partner in a LLP tends to be a body corporate?

A50. According to Rule 12 of the LLP Act, 2008 where the intending partner is a body corporate, the following shall be attached:

- copy of Resolution on the letterhead of such body corporate to become a partner in the proposed LLP and
- a copy of resolution or authorization of such body corporate also on letterhead mentioning the name and address of an individual nominated to act as nominee or nominee & Designated Partner on its behalf shall be attached

Q51. What happens if foreign nationals residing outside India or foreign body corporate(s) registered outside India wants to register as a LLP?

A51. When foreign nationals residing outside India or foreign body corporate(s) registered outside India wants to register as a LLP, then along with all the documents that are required to be filed for incorporation, such additional documents shall be duly certified:

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- the name, address and signature of an individual or nominee or nominee & Designated Partner of a body corporate on the incorporation document, and
- proof of identity, where required

Q52. Where are the register for LLP's maintained and how?

A52. The Register of LLP's are maintained in the office of Registrar, in which the names of LLPs shall be entered in the order in which they are registered.

Further, Every LLP so registered shall be assigned a LLP identification number (LLPIN) in one consecutive series.

Q53. How can a document be served to a limited liability partnership or a partner or designated partner?

A53. A document may be served on a limited liability partnership or a partner or designated partner thereof by sending it by post under a certificate of posting or by registered post or by any other manner, as may be prescribed, at the registered office and any other address specifically declared by the limited liability partnership for the purpose in such form and manner as may be prescribed.

Q54. Whether a LLP can declare an additional place for receiving communication from Registrar?

A54. Yes, a LLP can beside its registered office, can declare an additional place as address for receiving communication from Registrar, in the manner as laid down in LLP Agreement, and where there is no such provision in the LLP Agreement, after obtaining consent from all the partners.

Q55. Whether a LLP can shift its registered office from one place to another?

A55. Yes, a LLP can shift its registered office from one place to another by following the procedure as laid down in the LLP agreement, and where the LLP agreement does not provide for such procedure, unanimous consent of all partners shall be required.

Q56. What are the provisions relating to shifting of registered office from one state to another?

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- A56.** To shift a registered office from one state to another, the LLP shall:
- Follow the procedure as laid down in the LLP agreement to shift its registered office, and in absence of such provision obtain unanimous consent of all the partners to shift the registered office from one state to another.
 - In addition to it, the LLP shall obtain consent from its secured creditor.
 - It shall publish, a general notice, not less than 21 days before filing any notice with Registrar, in a daily newspaper published in English and in the principal language of the district in which registered office is situated and circulating in that district giving notice of change of registered office.
 - And shall file a notice in Form-15 with the Registrar from where the LLP proposes to shift its registered office with a copy thereof for the information to the Registrar under whose jurisdiction the registered office is proposed to be shifted.
- Q57. Whether the provisions relating to shifting of registered office “within the same state but under different jurisdiction of Registrar” is similar to shifting “from one state to another”**
- A57.** Yes, the provisions relating to shifting of registered office from “one place to another within the same state from the jurisdiction of one Registrar to another Registrar” is similar to that of shifting from “one state to another”.
- However, the only exception is that the LLP is not required to obtain consent from its secured creditor where the registered office is shifted within the same state.
- Q58. What is the fine, if the provisions for serving document or communication made to limited liability partnership or a partner or designated partner is not followed?**
- A58.** If the limited liability partnership contravenes any such provisions, the limited liability partnership and its every partner shall be punishable with fine which shall not be less than two thousand rupees, but which may extend to twenty-five thousand rupees.
- Q59. What is the fine, if the provisions for shifting of registered office is not followed?**

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A59. If the limited liability partnership contravenes any such provision, the limited liability partnership and its every partner shall be punishable with fine which shall not be less than two thousand rupees, but which may extend to twenty-five thousand rupees.

Q60. What is the effect of registration?

A60. The limited liability partnership after getting registered will become capable of:

- suing and being sued;
- acquiring, owning, holding and developing or disposing of property, whether movable or immovable, tangible or intangible;
- having a common seal, if it decides to have one; and
- doing and suffering such other acts and things as bodies corporate may lawfully do and suffer.

Q61. What kinds of names are not acceptable for registering a LLP?

A61. LLP shall not be allowed to get registered with a name, which is:

- Undesirable in the opinion of Central Government, or
- Identical or too nearly resembles to that of any other partnership firm or LLP 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

Q62. Can a foreign LLP or a foreign company apply for the same name with which it is registered in the country of incorporation?

A62. Yes, a Foreign LLP or a foreign company can apply for reserving its existing name by which it is registered in the country of its regulation or incorporation by applying in Form 25 to the Registrar.

Moreover, such reservation shall be valid for a period of three years from the date of intimation by the Registrar. but which may be renewed on a fresh application

Q63. What is the period of validity of reserved name of proposed LLP or the changed name?

Frequently Asked Questions on Limited Liability Partnership Act, 2008

A63. The name which has been approved by the Registrar remains valid for a period of three months³ from the date of intimation by the Registrar. If the proposed LLP is not incorporated within the said period, the name shall be lapsed and will be available for other applicants.

Q64. Can a LLP be formed without using the word “LLP” as the last word of its name?

A64. Every LLP shall either have the word “Limited Liability Partnership” or the acronym “LLP” as the last word of its name. No LLP shall be allowed to be incorporated without using such words.

Q65. Under what circumstances the name for LLP shall not be reserved?

A65. A name shall not generally be reserved, if—

- it includes any word or words which are offensive to any section of the people;
- the proposed name is the exact Hindi or English translation of the name of an existing limited liability partnership in English or Hindi, as the case may be;
- the proposed name has a close phonetic resemblance to the name of a LLP in existence, for example, J.K. LLP, Jay Kay LLP;
- it includes the word Co-operative, Sahakari or the equivalent of word 'co-operative' in the regional languages of the country;
- it connotes the participation or patronage of the Central or State Government, unless circumstances justify to, *e.g.*, a name may be deemed undesirable in certain context if it includes any of the words such as National, Union, Central, Federal, Republic, President, Rashtrapati, etc.;
- the proposed name contains the words 'British India';
- the proposed name implies association or connection with any Embassy or Consulate or of a foreign government which

³ Names expiring any day between 15th March 2020 to 31st July 2020 would be extended by 20 days beyond 31st July 2020

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suggests connection with local authorities such as Municipal, Panchayat, Zila Parishad or any other body connected with the Union or State Government;

- it is different from the name or names of the existing limited liability partnership only to the extent of having the name of a place within brackets before the word 'limited liability partnership', for example, Indian Press (Delhi) LLP should not be allowed in view of the existence of the LLP named Indian Press LLP :

However, the name shall be reserved, in case the "No Objection Certificate" is granted by the registered Limited Liability Partnership or company, as the case may be;

- it includes name of registered Trade mark, unless the consent of the owner of the trade mark has been produced;
- the proposed name is identical with or too nearly resembles the name of a firm or LLP or company incorporated outside India and reserved by such firm, LLP or company with the Registrar in accordance with these rules;
- it is identical with or too nearly resembles the name of the limited liability partnership or a company in liquidation or it is identical with or too nearly resembles names of the LLP or a company which is struck off, up to the period of 5 years;
- it includes words like 'Bank', 'Insurance', and 'Banking', 'Venture capital' or 'mutual fund' or business activity includes the words like 'Bank', 'Insurance', and 'Banking', 'Venture capital' or 'mutual fund' or such similar names without the approval of regulatory authority:

Nevertheless, the approval of regulatory authority shall be obtained at the time of application for incorporation or change of name of an existing Limited Liability Partnership, as the case may be;

- the proposed name includes words like French, British, German etc., unless the partners satisfy that there is some form of collaboration and connection with the foreigners of that particular country or place, the name of which is incorporated in the name;

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- the proposed name of limited liability partnership includes the words company secretary, chartered accountant, advocates or such similar words as indicative of a profession, as part of the proposed name, the same shall be allowed only after obtaining approval from the Council governing such profession or such authority as may be nominated by the Central Government, in this behalf :

Moreover, the approval of the council governing the profession shall be obtained at the time of application for incorporation or change of name of an existing Limited Liability Partnership, as the case may be

Q66. What is to be done, if a LLP already in existence finds out that a LLP with similar name has been subsequently incorporated?

A66. The LLP in existence, may apply to the Registrar in Form-23 to give a direction to the LLP incorporated subsequently to change its name.

The Registrar shall not consider any application unless it is filed within 24 months from the date of registration of the LLP under that name.

Q67. What does the application, filed for change of name, states?

A67. The application shall state—

- the LLPIN of limited liability partnership, or the CIN of the company or the registration number of the other entity as the case may be;
- the name with which the limited liability partnership or the company or any other entity was incorporated or registered;
- the grounds of objection to the name of the limited liability partnership incorporated subsequently

Q68. What are the documents that need to be attached while filing the application mentioned above?

A68. The person making the application shall attach—

- the authority under which he is making such an application;
- a copy of the incorporation certificate of the limited liability partnership or the company or the registration certificate of the entity, as the case may be,

Q69. What happens if the Central Government is satisfied that name of LLP is not acceptable for registration or resembles a name already in existence?

A69. The Central Government may direct such LLP to change its name, and the LLP shall comply with the said direction within three months after the date of the direction or such longer period as the Central Government may allow.

Q70. What is the fine, if the direction of Central Government is not followed as mentioned above?

A70. The LLP which fails to comply with the direction of the CG as mentioned above, shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to five lakh rupees and 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.

Q71. How can a registered name under LLP be further changed?

A71. Any LLP may change its name registered with the Registrar by filing with him a notice of such change in such form and manner and on payment of such fees as may be prescribed.

Q72. What is the penalty for improper use of words "limited liability partnership" or "LLP"?

A72. If any person or persons carry on business under any name or title of which the words "Limited Liability Partnership" or "LLP" or any contraction or imitation thereof is or are the last word or words, that person or each of those persons shall, unless duly incorporated as limited liability partnership, be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees.

Q73. What are the vitals to be published on the invoices, official correspondence and publications of the LLP?

A73. Every limited liability partnership shall ensure that its invoices, official correspondence and publications bear the following, namely: —

- the name, address of its registered office and registration number of the limited liability partnership; and
- a statement that it is registered with limited liability.

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Q74. What is the fine imposed, if the LLP does not publish its vitals on the invoices, official correspondence and publications?

A74. In such a case, the LLP shall be punishable with fine which shall not be less than two thousand rupees, but which may extend to twenty-five thousand rupees.

Q75. Within how many days of incorporation the LLP has to file its LLP Agreement?

A75. Every LLP shall file information with regard to LLP Agreement in Form-3 within 30 days of the date of incorporation.

Q76. How shall the changes in the LLP agreement be intimated to Registrar?

A76. Any change made in the LLP Agreement shall be intimated to Registrar by filing Form-3 within 30 days of such change.

Q77. If the name of the proposed LLP includes the name of the registered trade mark, can the name be allotted after producing consent from the owner of the registered trade mark?

A77. Yes, if the consent of the owner of the registered trade mark is obtained and the name so proposed is otherwise not liable to be rejected on any other ground as specified in Rule 18 or sub section 2 of section 15, then the same can be reserved by the proposed LLP.

Q78. What is the consequence of conducting an event of an act carried out by a limited liability partnership, or any of its partners, with intent to defraud creditors of the limited liability partnership or any other person, or for any fraudulent purpose?

A78. In such cases, every person who was knowingly a party to the carrying on of the business in the manner aforesaid shall be punishable with imprisonment for a term which may extend to two years and with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees.

Further, if any criminal proceedings arise, the limited liability partnership and any such partner or designated partner or employee shall be liable to pay compensation to any person who has suffered any loss or damage by reason of such conduct. Also, if such partner or designated partner or employee has acted fraudulently without

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knowledge of the limited liability partnership then LLP shall not be liable.

Q79. What do you mean by the term “Whistle blowing” in LLP?

A79. The term suggests that the Court or Tribunal may reduce or waive any penalty leviable against any partner or employee of a limited liability partnership under two conditions that:

- such partner or employee of a limited liability partnership has provided useful information during investigation of such limited liability partnership; or
- when any information given by any partner or employee (whether or not during investigation) leads to limited liability partnership or any partner or employee of such limited liability partnership being convicted under the Act or any other Act.

Q80. What benefit does the partner or employee of limited liability partnership gets, after being acted as a whistle blower?

A80. In the event of being acted as a whistle blower, the partner or employee of any limited liability partnership cannot be discharged, demoted, suspended, threatened, harassed or in any other manner discriminated against the terms and conditions of his limited liability partnership or employment merely because of his providing information or causing information to be provided during the investigation of such LLP.

Chapter-V

Contribution and Financial Disclosures

Q81. Whether it is mandatory for all the partners to contribute to the LLP?

A81. Yes, as per section 33 of the Act states that it is an obligation for a partner to contribute money or other property or other benefit or to perform services for a LLP as per the LLP agreement, t

Moreover, the First Schedule to the Act which governs the mutual rights and duties of the partners inter se and the mutual rights and duties of the partners with the LLP in the absence of LLP agreement, does not make it obligatory on each partner to make a contribution.

Q82. Whether a partner is allowed to make contribution in Kind?

A82. Yes, a contribution of a partner may consist of tangible, movable or immovable or intangible property or other benefit to the limited liability partnership, including, promissory notes, other agreements to contribute cash or property, and contracts for services performed or to be performed.

Q83. How will the contribution in kind, be accounted for in the books of accounts?

A83. Firstly, the contribution in kind shall be valued by a practising Chartered Accountant or by a practising Cost Accountant or by approved valuer from the panel maintained by the Central Government.

Later, the monetary value of contribution of each partner together with the amount derived by the valuer, shall be accounted for and disclosed in the books of accounts of the limited liability partnership

Q84. How will the partner of an LLP be obligated to contribute to the creditor where the creditor acts in reliance of the LLP agreement?

A84. When a creditor of a limited liability partnership, which extends credit or otherwise acts in reliance on an obligation described in that agreement, without notice of any compromise between partners, may enforce the original obligation against such partner.

Q85. What does the books of account contains?

A85. The books of account shall contain—

- particulars of all sums of money received and expended by the limited liability partnership and the matters in respect of which the receipt and expenditure takes place;
- a record of the assets and liabilities of the limited liability partnership;
- statements of cost of goods purchased, inventories, work-in-progress, finished goods and cost of goods sold; and
- any other particulars which the partners may decide.

Q86. How long the books of accounts of a LLP shall be preserved?

A86. The books of accounts of LLP shall be preserved for a period of eight years from the date on which they are made.

Q87. What is the due date for filing Statement of Account and Solvency?

A87. Every LLP shall file the Statement of Account and Solvency for the said financial year as at the last day of the said financial year in Form 8 with the Registrar, within a period of six months from the end of each financial year. Also, the statement shall be signed by the designated partner on behalf of the LLP.

Q88. Who signs the Statement of Account and Solvency?

A88. The Statement of Account and Solvency of a limited liability partnership shall be signed by the designated partners of the LLP and each designated partner shall be taken to be a party to its approval unless he shows that he took all reasonable steps to prevent their being approved and signed.

Q89. Who can be appointed as an auditor of a LLP?

A89. Only a chartered accountant in practice can be appointed as an auditor of LLP.

Q90. Whether a body corporate can be appointed as the auditor of a company?

A90. As per section 141(3)(a) of the Companies Act, 2013, a body corporate other than a limited liability partnership registered under the

Frequently Asked Questions on Limited Liability Partnership Act, 2008

Limited Liability Partnership Act, 2008, is not eligible for appointment as an auditor of a company.

Q91. Who appoints an auditor in an LLP?

A91. The designated partners may appoint an auditor or auditors—

- at any time for the first financial year but before the end of the first financial year,
- at least 30 days prior to the end of each financial year (other than the first financial year),
- to fill a casual vacancy in the office of auditor, including in the case when the turnover or contribution of a limited liability partnership exceeds the limits 40 lakh /25 lakh respectively or
- to fill up the vacancy caused by removal of an auditor.

The partners **may appoint an auditor or auditors where the designated partners have failed to appoint an auditor.**

Q92. What happens if an auditor is not appointed by the designated partner?

A92. In case, an is not appointed by the designated auditor then any auditor in office shall be deemed to be re-appointed, unless —

- the limited liability partnership agreement requires actual re-appointment, or
- the majority of partners have determined that he should not be re-appointed and have given a notice to this effect to the LLP.

Q93. Whether the provision of audit is mandatory for all the LLP?

A93. No, the audit of the books of accounts of a LLP is not mandatory if the turnover does not exceed, in any financial year, forty lakh rupees, or whose contribution does not exceed twenty-five lakh rupees.

Q94. Who has the power to appoint auditor of the LLP?

A94. The auditor shall be appointed by the designated partner of the LLP. However, where the designated partner has failed to exercise their power to appoint the auditor, the partners of the LLP gets the right to appoint the auditor.

Contribution and Financial Disclosures

Q95. When should the auditor for the first financial year be appointed?

A95. The auditor of a LLP can be appointed at any time for the first financial year but before the end of the first financial year.

Q96. What is the timeline within which the subsequent auditor (auditor for other than first financial year) can be appointed?

A96. The auditor for other than first financial year shall be appointed at least 30 days prior to the end of financial year.

Q97. Who shall fix the remuneration of auditor?

A97. The remuneration of an auditor appointed by the LLP may be fixed by the designated partner or by following the procedure as laid down in the LLP Agreement.

Q98. What is the tenure that an auditor has to serve?

A98. An auditor shall be appointed for each financial year of the LLP for auditing its accounts and the auditor shall hold office in accordance with the terms of his appointment and shall continue to hold such office till the period the new auditors are appointed, or they are re-appointed.

Q99. Can an auditor resign from his office during the term of his office?

A99. Yes, an auditor can resign from his office by depositing a notice in writing to that effect at the LLP's Registered Office and the notice shall be accompanied by a statement of the circumstances connected with his ceasing to hold office.

Q100. Is there any requirement of obtaining prior approval of authority to remove an auditor before expiry of its term?

A100. As per sub rule 18 of rule 24 of the LLP Rules 2009, the partners of the LLP may remove an auditor from office at any time by following the procedure as laid down in the LLP agreement, and where the agreement does not provide for such procedure, consent of all the partners shall be required for removal of the auditor from his office.

Q101. What are the annual filing responsibilities of a LLP?

A101. The annual filing responsibility of LLP include:

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- Filing of annual return with the registrar
- And Filing of Statement of Account and Solvency.

Q102. When should the annual return be filed to Registrar and in which form?

A102. Annual Return shall be filed by every LLP with the Registrar in form-11 within 60 days of closure of its financial year.

Q103. What are the consequences, if the LLP fails to file the annual return?

A103. The LLP which fails to comply with the provisions of filing the annual return shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees.

Whereas, 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.

Q104. Are there any attestations required for filing the annual return?

A104. In this case, where the annual return of an LLP does not exceed the turnover upto five crore rupees during the corresponding financial year or contribution upto fifty lakh rupees, the same shall be accompanied with a certificate from a designated partner, other than the signatory to the annual return, to the effect that annual return contains true and correct information.

In all other cases, the annual return shall be accompanied with a certificate from a Company Secretary in practice to the effect that he has verified the particulars from the books and records of the limited liability partnership and found them to be true and correct.

Q105. What are the documents that are available for inspection by general public?

A105. The list of documents that are available for inspection by any person upon payment of fees to Registrar are:

- Incorporation document
- Names of partners and changes, if any made therein

Contribution and Financial Disclosures

- Statement of Accounts and Solvency
- Annual Return

Q106. How can the general public get access to inspect the documents that are publicly available?

A106. The general public can access and download the documents that are publicly available by logging into the MCA portal and clicking on “View Public Documents” under the tab “MCA Services’.

There upon the user has to submit the requisite details of the LLP whose documents needs to be accessed, and simply have to “add on cart” and upon payment of prescribed fees, the user will get the access to inspect the documents.

Q107. What is the penalty for false statement?

A107. If in any return, statement or other document required by or for the purposes of any of the provisions of the Act, any person makes a statement—

- which is false in any material particular, knowing it to be false; or
- which omits any material fact knowing it to be material,

he shall be punishable with imprisonment for a term which may extend to two years and shall also be liable to fine which may extend to five lakh rupees, but which shall not be less than one lakh rupees.

Q108. What are the powers of Registrar for obtaining information?

A108. The powers of the Registrar are as follows: -

- He may require any person including any present or former partner or designated partner or employee of a limited liability partnership to answer any question or make any declaration or supply any details or particulars in writing to him within a reasonable period to obtain such information which as per him is necessary.
- In case, the person does not answer such question or make such declaration or supply such details or particulars asked for by the Registrar within a reasonable time or time given by the

Frequently Asked Questions on Limited Liability Partnership Act, 2008

Registrar or when the Registrar is not satisfied with the reply or declaration or details or particulars provided by such person, the Registrar shall have power to summon that person to appear before him or an inspector or any other public officer whom the Registrar may designate, to answer any such question or make such declaration or supply such details, as the case may be.

Q109. What are the consequences, if a person fails to comply with any summons or requisition of the Registrar?

A109. Such person shall be punishable with fine which shall not be less than two thousand rupees but which may extend to twenty-five thousand rupees.

Chapter VI

Compounding of Offences

Q110. Which of the offences are compoundable under LLP Act, 2008?

A110. Any offence under the LLP Act, 2008 which is punishable with fine only is compoundable by the Central Government

Q111. Application for compounding of offence shall be filed in which form?

A111. Every application for the compounding of offence shall be made in e-form-31 to the Registrar, who shall forward the same, together with his comments thereon, to the Central Government.

Q112. What is the requirement with respect to intimation to Registrar about the offence being compounded?

A112. Where any offence has been compounded, whether before or after institution of prosecution, the LLP shall intimate the Registrar in Form-22 within seven days from the date on which the offence was so compounded.

Q113. Whether the Central Govt. is empowered to direct any partner or designated partner of the LLP to file, any return, statement of account and solvency or other document while dealing with an application for compounding of an offence?

A113. Yes, the Central Government while dealing with an application for the compounding of the offence for a default in compliance with any provision of the Act which requires a LLP or its partner or partners or designated partner or designated partners to file or register with, or send to, the Registrar any return, statement of account and solvency or other document, may, if it thinks fit to do so, direct, before allowing compounding, by order, any partner or designated partner of the LLP to file or register with, or on payment of the fee, and the additional fee, required to be paid under section 69, such return, statement of account and solvency or other document within such time as may be specified in the order.

Q114. What is the period prescribed for preservation of documents by Registrar?

Frequently Asked Questions on Limited Liability Partnership Act, 2008

A114. As per Rule 27 of the LLP Rules, 2009, there are various timelines for preservation of documents by the Registrar such as:-

- Records to be preserved permanently
- Records to be preserved for 21 years
- Records to be preserved for 5 years
- Records to be preserved for 3 years

Chapter-VII

Investigation

Q115. Who shall have the power to appoint a person to investigate the affairs of a limited liability partnership?

A115. The Central Government has the power to appoint one or more competent persons as inspectors to investigate the affairs of a LLP.

Q116. How many minimum numbers of partners are required to make an application for investigating the affairs of the LLP?

A116. Not less than one-fifth of the total number of partners of LLP are required to file an application either directly with the Central Government or with the Tribunal which shall in turn make an application to CG or for investigating the affairs of the LLP.

Q117. Whether a LLP is eligible to make an application for the investigation of the affairs of the LLP?

A117. Yes, a LLP is eligible to make an application to the CG for the investigation of the affairs of the LLP

Q118. Can the partners of an LLP investigate into the affairs of the LLP?

A118. Yes, the partners of the LLP to investigate into the affairs of the LLP by making an application which shall be accompanied by a security amount calculated on the following scale but not exceeding 25 lakhs, for the payment of costs of the investigation

Turnover (Rs) [As stated in the Statement of Accounts and Solvency for the immediately preceding financial year]	Amount of Security
Upto 1 Crore	2 Lakh
1 Crore or more but less than 5 Crore	5 Lakh
5 Crore or more but less than 10 Crore	10 Lakh
10 Crore or more	25 Lakh

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Q119. What are the various modes in which application can be filed for investigating the affairs of the LLP?

A119. The various modes in which application can be filed are as follows:

- The Tribunal may, either suo motu, or an application received from not less than one-fifth of the total number of partners of LLP, by order, declares that the affairs of the LLP ought to be investigated and thereafter CG shall appoint one or more competent person(s) as inspector to investigate the affairs of the LLP
- Any court, by order, declares that the affairs of a LLP ought to be investigated and in such case CG shall appoint inspector
- If at least one-fifth of the total number of partners of LLP, make an application to the CG to investigate the affairs of the LLP, then CG may appoint inspector(s)
- If the LLP makes an application to CG that the affairs of the LLP ought to be investigated
- If in the opinion of CG, the affairs ought to be investigated

Q120. What are the various circumstances under which CG may form an opinion that the affairs of the LLP ought to be investigated?

A120. If in the opinion of the Central Government, there are circumstances suggesting the following, then the Central Government may appoint one or more competent persons as inspectors to investigate the affairs of a limited liability partnership:

- that the business of the limited liability partnership is being or has been conducted with an intent to defraud its creditors, partners or any other person, or otherwise for a fraudulent or unlawful purpose, or in a manner oppressive or unfairly prejudicial to some or any of its partners, or that the limited liability partnership was formed for any fraudulent or unlawful purpose; or
- that the affairs of the limited liability partnership are not being conducted in accordance with the provisions of the Act; or
- that, on receipt of a report of the Registrar or any other investigating or regulatory agency, there are sufficient reasons that the affairs of the limited liability partnership ought to be investigated.

Q121. Whether the inspector appointed by the CG has the power to carry out investigation into the affairs of the related entities

A121. Yes, the inspector has the power to carry out the investigation of an entity which has been associated in the past or is presently associated with the LLP, however the inspector shall obtain prior approval of CG before exercising this power.

Q122. Where the affairs of the LLP are investigated and the inspector thinks it necessary for the purpose of his investigation to investigate the affairs of a former designated partner as well. Does the former designated partner have the right to object?

A122. Where the inspector thinks it necessary to investigate the affairs of the former designated partner for the purpose of investigating the affairs of the LLP, then in such case prior approval of CG shall be accorded which will only be provided once a reasonable opportunity to show cause why such approval should not be accorded has been provided.

Q123. Who are not eligible to be appointed as the inspector for the purpose of investigation into the affairs of a LLP?

A123. Firm, body corporate and other association are not eligible to be appointed as inspector

Q124. Whether an inspector may keep in his custody books and papers of entity other than the LLP whose affairs are investigated?

A124. Yes, the inspector may with the previous approval of the CG, require any entity other than an entity referred to in sub-section (1) of section 47 to furnish such information to, or produce such books and papers before him or any person authorised by him in this behalf, with the previous approval of that Government, as he may consider necessary, if the furnishing of such information or the production of such books and papers is relevant or necessary for the purposes of his investigation.

And the inspector may keep in his custody such books and papers produced for thirty days and thereafter shall return the same to the other entity or individual by whom or on whose behalf the books and papers are produced.

Frequently Asked Questions on Limited Liability Partnership Act, 2008

Q125. How long the inspector may keep in his custody any books and papers produced to him?

A125. The inspector may keep in his custody any books and papers produced to him for thirty days.

Q126. What shall be the consequences in case any person fails without any reasonable cause or refuses to appear before the inspector personally when required to do so under the provisions of section 47(4) of the Act?

A126. If any person fails without reasonable cause or refuses:

- to produce before an inspector or any person authorised by him in this behalf with the previous approval of the CG any book or paper which it is his duty to produce; or
- to furnish any information which is his duty to furnish; or
- to appear before the inspector personally when required to do so or to answer any question which is put to him by the inspector; or
- to sign the notes of any examination,

he shall be punishable with fine which shall not be less than two thousand rupees but which may extend to twenty-five thousand rupees and with a further fine which shall not be less than fifty rupees but which may extend to five hundred rupees for every day after the first day after which the default continues.

Q127. What are the grounds on the basis of which the inspector may seize the books and papers of, or relating to LLP?

A127. Where in course of investigation, the inspector has reasonable ground to believe that the books & papers of, or relating to, the LLP may be destroyed, mutilated, altered, falsified or secreted, the inspector may make an application for the Judicial Magistrate of the first class or the Metropolitan Magistrate, having jurisdiction, for an order for the seizure of such books and papers.

Q128. How long can the inspector keep the books and papers of, or relating to the LLP seized under him?

A128. The inspector shall keep in his custody the books and papers seized under him for such period not later than the conclusion of the

investigation as he considers necessary and thereafter shall return the same to the concerned entity or person from whose custody or power they were seized and inform the Magistrate of such return

Even so, the books and papers shall not be kept seized for a continuous period of more than six months.

Q129. Whether the inspector can place identification marks on the books and papers which are seized under him before returning it?

A129. Yes, the inspector may, before returning books and papers which are seized under his custody, place identification marks on them or any part thereof and this has been provided in second proviso of sub section 3 of section 48

Q130. An inspector appointed by the Central Government for investigating the affairs of the LLP have submitted an interim report to the CG. The LLP whose affairs was being investigated claims that it is also entitled to receive the interim report so submitted. Whether the claim of the LLP is valid in law?

A130. As per section 49(2) the CG shall forward copy of any report other than an interim report made by the inspectors to the limited liability partnership at its registered office, and also to any other entity or person dealt with or related to the report.

Therefore, pursuant to the above provisions of the law, the claim of the LLP is not valid.

Q131. Who are entitled to receive the Inspector's Report which is submitted to the Central Government?

A131. The limited liability partnership and any other entity or person dealt with or related to the report are entitled to receive the copy of the report (other than interim report) made by the Inspector which is submitted to the CG.

And the Central Government may, if it thinks fit, furnish a copy thereof, on request and on payment of the prescribed fee, to any person or entity related to or affected by the report.

Q132. What action can be taken, where from the report of inspector it appears to the CG, a person has been found guilty of an offence?

A132. If from the report of inspector, it appears to the CG that any person in

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relation to the LLP or in relation to any other entity whose affairs have been investigated, has been guilty of any offence for which he is liable, the CG may prosecute such person for the offence

Q133. Who shall bear the expenses of investigation?

A133. The expenses of, and incidental to, the investigation shall be defrayed in the first instance by the CG, but to the extent mentioned below shall be reimbursed to the CG by the following person, namely:

- Any person who is convicted on a prosecution, or who is ordered to pay damages or restore any property in proceedings brought by virtue of section 52, may, in the same proceedings, be ordered to pay the said expenses to such extent as may be specified by the court, or ordering him to pay such damages or restore such property, as the case may be;
- Any entity in whose name proceedings are brought as aforesaid shall be liable, to the extent of the amount or value of any sums or property recovered by it as a result of the proceedings; and the amount for it is liable shall be a first charge on the sums or property.
- Unless, as a result of the investigation, a prosecution is instituted, any entity, a partner or designated partner or any other person dealt with by the report of the inspector shall be liable to reimburse the CG in respect of whole of the expenses which shall be recoverable as arrears of land revenue and the applicants for the investigation where the inspector was appointed in pursuance of the provisions of section 43(1)(a).

Q134. Whether the report of inspector appointed under the provision of the Act, be admissible in any legal proceedings as evidence in relation to any matter contained in the report?

A134. Yes, a copy of report of any inspector appointed under the provision of the Act, which is authenticated either by the common seal, if any, of the LLP whose affairs have been investigated into or by a certificate of a public officer having the custody of the report, under and in accordance with the provisions of section 76 of the Indian Evidence Act, 1872 (1 of 1872), shall be admissible in any legal proceedings as evidence in relation to any matter contained in the report

Chapter-VIII

Conversion into LLP

Q135. Which type of entities can be converted into LLP?

A135. The following type of entities can get themselves converted into LLP:

- Firm
- Private Company
- Unlisted Public Company

Q136. Can a Listed Public Company be converted into LLP?

A136. No, Listed Public Company cannot be converted into LLP.

Q137. What is the pre-requisite to convert a firm into LLP?

A137. A firm may apply to convert it into LLP if and only if the partners of the LLP into which the firm is to be converted, comprise all the partners of the firm and no one else.

Q138. What is the procedure to convert a Firm into LLP?

A138. A Firm may apply to convert into LLP by filing with the Registrar a statement of all of its partner in Form-17 along with the Incorporation document and statement as referred in section 11 of the Act.

Thereupon, Registrar if satisfied, shall issue a certificate of conversion under his seal in Form 19 and within 15 days from the date of registration, the LLP so converted shall inform the concerned registrar of firm with which it was registered under the provisions of the Indian Partnership Act, 1932, about the conversion and of the particulars of the LLP in Form-14

Q139. What are the pre-conditions that need to be fulfilled to convert a private or unlisted public company into LLP?

A139. A company may apply to convert into a LLP in accordance with the Third or Fourth Schedule, as the case may be, if and only if there is no security interest in its assets subsisting or in force at the time of application and the partners of the LLP to which it converts comprise all the shareholders of the company and no one else.

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Q140. What are the legal formalities for converting an eligible company into LLP?

A140. To convert an eligible company into LLP, the company has to apply in form-18 for conversion thereof along with the Incorporation document and statement as specified in section 11 of the LLP Act. Upon, receipt of documents, the Registrar if satisfied shall issue a certificate of registration under his seal in Form-19 and the LLP so converted shall within 15 days from the receipt of the registration certificate, shall inform the ROC with which it was registered under the provisions of the Companies Act about the conversion and the particulars of the LLP.

Q141. If the Registrar has refused the conversion, does the applicant have any right to appeal?

A141. Where the Registrar has refused the registration, the applicant firm, private company or unlisted company as the case may be, may apply to the Tribunal within 60 days from the date of receipt of such intimation of refusal.

Q142. What is the effect of conversion into LLP?

A142. On and from the date of conversion into LLP:

- There shall be a LLP by the name specified in this certificate of registration
- all tangible (movable and immovable) property as well as intangible property vested in the firm or company, as the case may be, all assets, interests, rights, privileges, liabilities, obligations relating to the firm and the whole of the undertaking of the firm shall be transferred to and shall vest in the limited liability partnership without further assurance, act or deed;
- the firm/company shall be deemed to be dissolved and removed from the records maintained under that Act.
- All proceedings by or against the firm/company which are pending in any Court/Tribunal/any authority on the date of registration may be continued, completed and enforced by or against the limited liability partnership.
- Any conviction, ruling, order or judgment of any Court, Tribunal

or other authority in favor of or against the firm/company may be enforced by or against the limited liability partnership

- Every agreement, to which the firm/company was a party immediately before the date of registration, shall have the effect as if the LLP was a party to such an agreement instead of the firm.
- And other such effects as specified in Second, Third or Fourth Schedule to the LLP Act, 2008 as the case may be.

Q143. Whether the official correspondences of the LLP shall bear the fact of its conversion from firm to LLP, and if yes, upto what period of time?

A143. Yes, the LLP shall for a period of twelve months commencing not later than fourteen days after the date of registration, every official correspondence of the limited liability partnership bears the following:

- a statement that it was, as from the date of registration, converted from a firm into a limited liability partnership; and
- the name and registration number, if applicable, of the firm from which it was converted

Q144. Whether upon conversion, LLP is required to file an application to the relevant authority for registration/ transfer of name on the properties which are transferred due to conversion and within what timeframe it shall be done?

A144. Yes, it has been provided in the Act that all properties of the firm/ private company/ unlisted public company as the case may be, transferred to and vested under the name of LLP consequent to the conversion into LLP and such property is registered with any authority, the LLP shall, as soon as practicable after the date of registration, take all necessary steps as required by the relevant authority to notify the authority of the conversion and of the particulars of the LLP in such medium and form as the authority may specify.

Q145. What shall be the penal consequences, if any firm which has been converted into LLP does not comply with the provisions of paragraph 17(1) of Schedule II relating to notice of conversion in correspondence?

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A145. Any limited liability partnership which contravenes the provisions of sub-paragraph (1) of paragraph 17(1) of Schedule II, shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees and with a further fine which shall not be less than fifty rupees but which may extend to five hundred rupees for every day after the first day after which the default continues

Similar penalty is prescribed for eligible companies i.e. private limited companies and unlisted public companies which has been converted into LLP and which does not comply with the paragraph 15(1) or 16(1) of the Third and Fourth Schedule respectively.

Chapter-IX

Foreign Limited Liability Partnership

Q146. What are the statutory compliances that a foreign LLP has to adhere to upon establishing a place of business in India?

A146. A foreign LLP shall within 30 days of establishing a place of business in India, has to file Form 27 with the Registrar having a jurisdiction over New Delhi, through the portal maintained by the MCA on its website www.mca.gov.in.

There shall be annexed the following document cum information with the Form-27

- a copy of the certificate of incorporation or registration and other instrument(s) constituting or defining the constitution of the LLP
- the full address of the registered or principal office of the LLP in the country of its incorporation
- the full address of the office of the LLP in India which is to be deemed as its principal place of business in India; and
- list of partners and designated partners, if any, and the names and addresses of two or more persons resident in India, authorized to accept on behalf of the limited liability partnership, service of process and any notices or other documents required to be served on the LLP.

All the above documents shall be in English Language, and if not in English then certified translation shall be annexed to such documents.

Q147. When is the translation considered to be a certified translation?

A147. The translation of documents in English Language is considered to be a certified translation thereof if

- Where such translation is made within India, it has been authenticated by
 - An Advocate, Chartered Accountant, Company Secretary or Cost Accountant; or
 - By an affidavit of a person who in the opinion of the

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Registrar has adequate knowledge of the original and English language.

- Where such translation is made outside India, it has been authenticated
 - in accordance with sub rule 2 of Rule 34 of the LLP Rules, 2009 (may be referred in FAQ-146)

Q148. What are the provisions relating to certification of documents?

A148. The documents relating to the foreign LLP are considered as certified true copy if:

- If the LLP has been incorporated in any country which is a part of the common wealth, and the copy of the documents are certified by
 - An official of the government to whose custody the original is committed; or
 - By a notary (public) in that part of the commonwealth
 - By an officer of the LLP, on oath before a person having authority to administer an oath in that part of the commonwealth.
- If the LLP has been incorporated in any country outside the common wealth and is not a party to the Hauge Convention, and the copy of the documents are certified by
 - An official of the government to whose custody the original is committed; or
 - By a notary (public) of such country; or
 - By an officer of the LLP, before a person having authority to administer an oath as provided under section 3 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948 (XL of 1948), or as the case may be, by section 3 of the Commissioners of Oaths Act, 1889 (52 and 53 Vic. C. 10) the status of the person administering the oath in the latter case being authenticated by any official specified in section 6 of the Commissioners of Oaths Act, 1889 (52 and 53 Vic. C. 10) or in any Act amending the same.

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The signature or seal of the official referred to in (a) or the certificate of the Notary (Public) referred to in (b) shall be authenticated by a Diplomatic or Consular Officer empowered in this behalf under section 3 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948 (XL of 1948), or where there is no such officer, by any of the officials mentioned in section 6 of the Commissioners of Oaths Act, 1889 (52 and 53 Vic. C. 10), or in any Act amending the same.

- If the LLP has been incorporated in any country that falls outside the common wealth but is a party to the Hauge Apostille Convention, 1961 and the copy of the documents are certified by
 - An official of the government to whose custody the original is committed and be duly apostilled in accordance with the Hauge Convention;
 - and the list of partners and designated partners of the LLP, if any, the name and address of the persons resident in India who are authorized to accept the notice on behalf of the LLP shall be duly notarized and apostilled in the country of their origin in accordance with the Hauge Convention

Q149. Who is required to file Form 28 and what is the timeline within which it shall be filed?

A149. Any foreign LLP in the event of any alteration in

- the instrument constituting or defining the constitution of a LLP incorporated or registered outside India
- the registered or principal office of a LLP incorporated or registered outside India
- the partner or designated partner, if any, of a LLP incorporated or registered outside India

is required to file in Form 28 such alterations with ROC within sixty days of close of the financial year.

Q150. Where all persons resident in India whose names and addresses have been provided to ROC for acceptance of notices or other

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documents on behalf of the FLLP, cease to reside in India, in such a situation, where shall the document/notices will be served by ROC?

A150. If at any time all the persons whose names and addresses have been so delivered are dead or have ceased so to reside, or refuse to accept service on behalf of the limited liability partnership or for any reason, cannot be served then the document may be served on the LLP by leaving it at, or sending it by post to, any place of business established by the LLP in India

And similarly, the document may be served on the LLP by leaving it at, or sending it by post to, any place of business established by the LLP in India, where any FLLP makes default in delivering to the Registrar the names and addresses of persons resident in India who are authorized to accept on behalf of the limited liability partnership service of process, notices or other documents.

Q151. What is Form 29 and who is under obligation to file it?

A151. Form 29 is an e-form available at the MCA website which has to be filed by every foreign LLP, in case of any alteration or modification in

- the certificate of incorporation or registration of LLP incorporated or registered outside India
- the name or address of any of the persons authorized to accept service on behalf of a foreign LLP in India
- the principal place of business of foreign LLP in India
- Cessation to have a place of business in India.

Q152. Whether a foreign LLP is also required to file statement of account and solvency?

A152. Yes, Every Foreign LLP shall file with the Registrar the statement of account and solvency in Form 8 duly signed by the authorized representatives within a period of 30 days from the end of six months of the financial year.

Q153. When does the obligation of the LLP to file any document with the Registrar cease to exist?

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A153. When a Foreign LLP ceases to have a place of business in India and it has informed the Registrar by filing Form 29, then from the date on which the notice is so given, the Foreign LLP shall cease to be liable for filing any document with the Registrar. Nevertheless, the FLLP should not have any other place of business in India and it should have filed all the documents that were due for filing as on the date of notice.

Chapter-X

Compromise or Arrangement of LLP

Q154. Who all are eligible to file an application for convening a meeting, proposing a compromise or arrangement?

A154. An application for convening a meeting, proposing a compromise or arrangement can be filed by a LLP, partner or creditor of the LLP, and in case of the LLP which is being wound up, by the liquidator. The application shall be submitted to the Tribunal.

Q155. What is the broad procedure for proposing compromise or arrangement under the Act?

A155. For the purpose of proposing a compromise or arrangement under the Act:

- An application shall be filed with the Tribunal for convening a meeting of creditors or partner or creditors and partners of the LLP, and there shall be annexed an affidavit in Form 20 with the copy of the proposed compromise or arrangement

Furthermore, where the LLP is not the applicant, a copy of the summons in form 21 and of the affidavit shall be served on LLP, or, where the LLP is being wound-up, on its liquidator, not less than 14 days before the date fixed for the hearing of the summons.

- Upon the hearing of the summons or any adjourned hearing thereof, the Tribunal may, call for the meeting and give such directions as it may think necessary in respect of the matters such as:
 - Fixing the place and time of such meeting(s)
 - Appointment of chairman of the meeting
 - Fixation of quorum and procedure of the meeting
 - Determining creditor/partner and the values of the creditor/partner whose meetings have to be held
 - Notice of the meeting or advertisement to be issued of such notice, if any

Compromise or Arrangement of LLP

- Time within which the chairman has to report the result to the Tribunal
- And such other matters as the Tribunal may deem necessary.
- After conducting the meeting in accordance with the rule and directions as prescribed by the Tribunal, the chairman shall report the result of the meeting to the Tribunal.
- And the LLP shall within 7 days of the filing of the report by the chairman, present a petition to the Tribunal for confirmation of the compromise or arrangement if the proposed compromise or arrangement is agreed to, with or without modification.
- And where the compromise or arrangement has been agreed to, by the majority representing three fourth in value of the creditors or partners, and the same has been sanctioned by the Tribunal as well, it shall have a binding effect on all.

However, the order by the Tribunal sanctioning the compromise or arrangement shall be effective only when it is filed by the LLP with the Registrar within 30 days of making such order.

Q156. Whether voting by proxy is permitted in the meeting of creditor or partner as the case may be for proposing compromise or arrangement under the Act?

A156. Yes, voting by proxy shall be permitted where a proxy in Form 26 duly signed by the person entitled to attend and vote at the meeting is filed with the limited liability partnership at its registered office not later than 48 hours before the meeting.

Q157. What is the minimum period of notice that is to be served?

A157. The notice of the meeting shall be sent at least twenty-one clear days before the date fixed for the meeting and the notice shall be accompanied by a copy of the proposed compromise or arrangement along with statement showing material interest of the designated partners, if any, and Form 26 (Form for proxy).

Q158. Who is responsible for sending the notice of meetings to the creditors or partners for proposing compromise or arrangement under the Act?

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A158. The chairman appointed for the meeting, or, if the Tribunal so directs, the limited liability partnership (or its Liquidator), or any other person as the Tribunal may direct is responsible for sending the notice of meetings individually to the creditors or partners by post under certificate for posting to their last known addresses for proposing compromise or arrangement.

Q159. **What is the timeframe within which the result of the meeting proposed for approving the C & A shall be reported to the Tribunal, where no time has been fixed by the order?**

A159. The chairman of the meeting, or where there are separate meetings, the chairman of each meeting shall, within seven days after the conclusion of the meeting, report the result thereof to the Tribunal, where no time has been fixed by the order of Tribunal.

The report shall state accurately the number of creditors or the partners, as the case may be, who were present and who voted at the meeting either in person or by proxy, their individual values and the way they voted.

Q160. **Where the C & A is agreed to by the majority of creditors or partners as specified in sub-section (2) of section 60, but the LLP fails to present the petition to the Tribunal for confirmation of the C & A, under such a situation whether the partners or the creditors can file the petition, and if yes, who shall bear the cost thereof?**

A160. Yes, where the LLP fails to present the petition to the Tribunal for confirmation of the compromise or arrangement which has been agreed to by the requisite majority of creditors/ partners as prescribed under section 60(2), it shall be open to any creditor or partner as the case may be, with the leave of the Tribunal, to present the petition for confirmation and the LLP shall be liable for the costs thereof.

Q161. **What penalty shall be imposed on the LLP and its designated partner in case an order passed by the Tribunal, sanctioning any compromise or arrangement, is not filed with the ROC?**

A161. If default is made in filing the order of tribunal made under sub-section 2 of section 60 with the ROC within the prescribed timeline, then the limited liability partnership, and every designated partner of the limited

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liability partnership shall be punishable with fine which may extend to one lakh rupees.

Q162. When shall the order of compromise or arrangement of the LLP be considered as effective?

A162. The order by the Tribunal sanctioning the compromise or arrangement shall be effective only when it is filed by the LLP with the Registrar within 30 days of making such order and such order shall be filed in Form-22.

Q163. Whether the time for obtaining the certified copy of the order of the Tribunal shall be included in the time period of 30 days allowed for filing the order with the ROC?

A163. No, as per explanation to sub rule 11 of rule 35, in computing the period of 30 days from the date of order, the requisite time for obtaining a certified copy of order shall be excluded.

Q164. Does the Tribunal have the power to stay any suit or proceedings which is pending against the LLP?

A164. Yes, the Tribunal may at any time after an application has been made to it, stay the commencement or continuation of any suit or proceeding against the LLP on such terms as the Tribunal thinks fit, until the application is finally disposed of.

Q165. What are the powers of the Tribunal post sanctioning a compromise or arrangement?

A165. The Tribunal after sanctioning a compromise or arrangement has the power to supervise the carrying out of the Compromise or Arrangement and may at any time give directions in regard to any matter or make such modification in the compromise or arrangement as it may consider necessary for the proper working.

Q166. What are the powers that are vested with Tribunal in case the compromise or arrangement is not working satisfactorily?

A166. Where the compromise or arrangement so sanctioned, is not working satisfactorily the Tribunal may make any modification as it may consider necessary in this behalf for the smooth and proper working.

However, where the compromise or arrangement is not working satisfactorily even after the modification thereto, the Tribunal shall on

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its own motion or on the application of any person interested in the affairs of the LLP, make an order for winding up the LLP and such order shall be deemed to be an order made under section 64 of the LLP Act, 2008.

Q167. Under what situations an arrangement for revival and rehabilitation of any LLP may be proposed?

A167. An arrangement for revival and rehabilitation of any LLP may be proposed:

- where on a demand by the creditors of the LLP representing fifty per cent or more of its outstanding amount of debt the LLP has failed to pay the debt, within thirty days of the service of the notice of demand or to secure or compound it to the reasonable satisfaction of the creditors; or
- where a petition for winding up of a LLP is pending before the Tribunal, in terms of the directions given by the Tribunal on the winding up petition; or
- where the liquidator has filed his report before the Tribunal, in terms of directions given by the Tribunal on the report of the Liquidator.

Q168. Who can file an application for sanction of an arrangement for revival and rehabilitation before the Tribunal and what documents shall be accompanied with such an application?

A168. Any LLP or any creditor or partner of the LLP, or in the case of a LLP which is being wound up, the Liquidator, may make an application for sanction of the arrangement for revival and rehabilitation before the Tribunal, without prejudice to clause (i).

And there shall be accompanied the following documents with the application as aforesaid:

- a statement of account and solvency of LLP for the immediately preceding financial year, in case the application is made by the LLP;
- particulars and documents relevant to the scheme including commitments whether financial or otherwise expected from various parties or, proposed restructuring or rescheduling of the

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debts, or any undertaking or understanding, in case from bank or financial institution through a letter or in any other case through an affidavit of concerned party or parties, or in any other form as may be directed by the Tribunal; and

- proposed scheme of revival and rehabilitation of the LLP including proposal for appointment of an LLP Administrator.

Q169. What is the prescribed period of time within which the application for revival and rehabilitation shall be filed with the Tribunal?

A169. An application for revival and rehabilitation shall be made to the Tribunal within 90 days from the date of expiry of demand notice or from the date of the direction of the Tribunal referred to under clause (i) of sub-rule 12. (refer FAQ-165)

Q170. Who can be appointed as a LLP administrator?

A170. The LLP administrator shall be appointed from a panel maintained by the Central Government for winding up and dissolution of LLPs.

Q171. What are the obligations of the LLP administrator w.r.t submission of report?

A171. The obligations of the LLP administrator w.r.t submission of report are as follows:

- He shall submit his preliminary report including the decision of the meeting to the Tribunal within 60 days of order made under clause (b) of sub-rule 14.
- He shall complete all the actions relating to implementation of the revival and rehabilitation arrangement and submit his final report before the Tribunal within such time directed by the Tribunal but not exceeding 180 days of the order under clause (i) of sub-rule (15)
- And shall, within 30 days of the making of order or orders under sub-rule (15) cause certified copy thereof to be filed with the Registrar concerned in Form 22 along with fee as mentioned in Annexure 'A'.

Q172. What are the matters on which the Tribunal can make provisions in its order, where an application is filed for amalgamation/ reconstruction under the Act?

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A172. The Tribunal may, either by the order sanctioning the compromise or arrangement or by a subsequent order, make provisions for all or any of the following matters, namely:

- the transfer to the transferee limited liability partnership of the whole or any part of the undertaking, property or liabilities of any transferor limited liability partnership
- the continuation by or against the transferee limited liability partnership of any legal proceedings pending by or against any transferor limited liability partnership;
- the dissolution, without winding up, of any transferor limited liability partnership;
- the provision to be made for any person who, within such time and in such manner as the Tribunal directs, dissent from the compromise or arrangement; and
- such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out.

Q173. Whether the LLP in relation to which the aforesaid order has been passed by the Tribunal, is required to intimate the same to the registrar?

A173. Yes, the LLP in relation to which the aforesaid order has been passed by the Tribunal, is required to file the certified copy of the order to the Registrar within a period of 30 days after making the order.

Q174. What penalty shall be imposed where the LLP fails to file a certified copy of the order of the Tribunal with the Registrar within the prescribed period of time?

A174. If default is made in complying with the provisions of sub-section (3) of section 62 i.e. the LLP has failed to file the certified copy of the order of the Tribunal with the Registrar within the prescribed period of time, then the limited liability partnership and every designated partner of the limited liability partnership shall be punishable with fine which may extend to fifty thousand rupees.

Chapter-XI

Strike Off, Winding Up and Dissolution

Q175. Under what circumstances the Registrar can strike off the name of LLP from the register of LLP made under the Act?

A175. The Registrar can strike off the name of LLP from the register of LLP under the following circumstances:

- where the LLP is not carrying on any business or operation for a period of two years or more and the Registrar has reasonable cause to believe the same, for the purpose of taking suo motu action for striking off the name of the LLP; or
- where the LLP is not carrying on any business or operation for a period of one year or more and has made an application in Form 24 to the Registrar, with the consent of all partners of the LLP for striking off its name from the register; or
- where the Registrar has reasonable cause to believe that a LLP is not carrying on business or its operation in accordance with the provisions of the Act, the name of limited liability partnership may be struck off the register of LLP in such manner as may be prescribed, however before striking off the name of such a LLP, reasonable opportunity of being heard shall be provided.

Q176. What are the pre-requisites before filing an application to Registrar in Form 24?

A176. The LLP before filing an application for strike off name with the Registrar in Form-24 shall ensure that it has filed all its overdue returns in Form 8 and Form 11 up to the end of the financial year in which the LLP ceased to carry on its business or commercial operations.

Q177. Whether approval from the regulatory authority is required, where the LLP is regulated under a special law?

A177. Yes, Every LLP which is regulated under a special law has to seek prior approval of the regulatory body constituted or established under

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that law, before making an application to Registrar for striking off the name and the same shall be enclosed with Form-24

Q178. What are the lists of documents that need to be enclosed along with an application for strike off?

A178. The following documents shall be enclosed along with Form 24 (application for strike off):

- a statement of account disclosing nil assets and nil liabilities, certified by a Chartered Accountant in practice made up to a date not earlier than thirty days of the date of filing of Form 24
- an affidavit signed by the designated partners, either jointly or severally, to the effect
 - that the LLP has not commenced business or where it has commenced business, it ceased to carry on such business from....(dd/mm/yyyy),
 - that the LLP has no liabilities and indemnifying any liability that may arise even after striking off its name,
 - that the LLP has not opened any Bank Account and where it had opened, the said bank account has since been closed together with certificate(s) or statement from the respective bank demonstrating closure of Bank Account,
 - that the LLP has not filed any ITR where it has not carried on any business since its incorporation, if applicable.
- a copy of the acknowledgement of the latest Income-tax return filed under the Income-tax Act, 1961 and the rules made thereunder for the time being in force, where the LLP has carried out any business and has filed such return.
- copy of the initial LLP agreement, if entered into and not filed, along with changes thereof in cases where the LLP has not commenced business or commercial operations since its incorporation.

Q179. Which date shall be considered as the date of cessation of commercial operation for the purpose of Rule 37 of the LLP

Strike Off, Winding Up and Dissolution

Rules, 2009, in a situation where the LLP has ceased to generate revenue from its business activities but few months later it is in receipt of money from its debtors pertaining to the sales made earlier?

A179. The date from which the Limited Liability Partnership ceased to carry on its revenue generating business shall be considered as the date of cessation of commercial operation 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 i.e. they shall be ignored for this purpose.

Q180. Within how many days a creditor or any other interested party may object to the dissolution process?

A180. As per Rule 37(2) of the LLP Rules 2009, contents of an application made by the LLP shall be placed on the website of MCA for a period of one month. Within this period of time, any person whose interest is affected may apply to ROC stating its objection along with relevant documentary evidence.

Q181. Whether a designated partner remains liable for any liability even after the name has been struck off by the Registrar?

A181. Yes, as per Rule 37(5) of the LLP Rules 2009, the liability, if any, of every designated partner of the LLP which has been dissolved, shall continue and may be enforced as if the LLP had not been dissolved.

Q182. From which date the LLP is considered to be dissolved?

A182. Where the registrar is satisfied that the name shall be struck off from the register of the LLP and publish a notice in this regard in the Official Gazette, the date on which this notice has been published in the Official Gazette shall be considered as the effective date of dissolution.

Q183. Whether the assets of the LLP shall be made available for the payment or discharge of all its liabilities and obligations even after the date of the order removing the name of the LLP from the register?

A183. Yes, as per proviso to sub rule 4 of rule 37, the assets of the limited liability partnership shall be made available for the payment or

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discharge of all its liabilities and obligations even after the date of the order removing the name of the limited liability partnership from the register

Q184. What are the modes in which a LLP may be wind up?

A184. The modes in which a LLP may be wind up are as follows:

- Voluntary; or
- By the Tribunal

Q185. What are the circumstances under which LLP may be wound up by the Tribunal?

A185. A LLP may be wound up by the Tribunal in any of the following circumstances:

- If the LLP decides that it should be wound up by the Tribunal
- If for a period of more than six months, the number of partners of LLP is reduced below two,
- If the LLP has acted against the interests of the sovereignty and integrity of India, the security of the State or public order
- If the LLP has made a default in filing with the Registrar the Statement of Account and Solvency or annual return for any five consecutive financial years
- If the Tribunal is of the opinion that it is just and equitable that the LLP be wound up.

Q186. What is the minimum assent that is required to wound up a LLP voluntarily?

A186. A LLP may be wound up voluntarily if the LLP passes a resolution to wind up the LLP with approval of at least three-fourths of the total number of its partners and where the LLP has creditors, whether secured or unsecured, the winding up shall not take place unless approval of such creditors takes place.

Chapter-XII

Miscellaneous

Q187. Who is required to file the form “Companies affirmation of Readiness towards COVID-19” and upto what date it shall be filed?

A187. Every Companies and LLPs (including FLLPs) are required to file “Companies affirmation of Readiness towards COVID-19” with effect from March 23, 2020 onwards at the earliest convenience.

Q188. Whether a partner is allowed to lend money to or transact other business with the LLP in accordance with the Act?

A188. Yes, 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.

Q189. Whether any document provided by the Registrar which is certified through affixing DSC of Registrar, be admissible as evidence before any court?

A189. Yes, a copy of or an extract from any document electronically filed with or submitted to the Registrar which is supplied or issued by the Registrar and certified through affixing digital signature as per the Information Technology Act, 2000 (21 of 2000) to be a true copy of or extract from such document shall, in any proceedings, be admissible in evidence as of equal validity with the original document.

And any information supplied by the Registrar that is certified by the Registrar through affixing digital signature to be a true extract from any document filed with or submitted to the Registrar shall, in any proceedings, be admissible in evidence and be presumed, unless evidence to the contrary is adduced, to be a true extract from such document.

Q190. What punishment is prescribed for the subsequent offences committed by the LLP or its partner or designated partner?

A190. In case a LLP or any partner or designated partner of such LLP commits any offence, the LLP or any partner or designated partner

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shall, for the second or subsequent offence, be punishable with imprisonment as provided, but in case of offences for which fine is prescribed either along with or exclusive of imprisonment, with fine which shall be twice the amount of fine for such offence.

Q191. Where any document or e-form which is filed to the Registrar and is processed under the Straight Through Process (STP), whether the same can be examined by the Registrar later on and be treated as “defective”?

A191. Yes, the e-forms or documents which are marked as informatory in nature and filed under STP may be examined by the Registrar any time after its filing. And where upon examination, the Registrar finds that the document/form is incomplete or defective in any respect, he shall treat it as “defective” in the electronic registry and shall issue a notice pointing out such defects or incompleteness, at the last intimated e-mail address (if available) of the person or the LLP which has filed the document and also in writing by post at the address of such person /LLP/ registered office of the LLP.

Q192. Whether the e-form which has been marked as “defective” by the Registrar upon examination of the form filed under STP, has to be filed afresh or the same can be re-submitted using the same SRN with modifications/corrections thereto?

A192. Where a notice has been received by the Registrar pointing out the defects or incompleteness in the e-form which has earlier been approved through STP, shall be filed afresh with fee and additional fee as applicable, after rectifying such defects or incompleteness within a period of thirty days from the date of such notice

Q193. How shall the rectification be made in the form submitted by a LLP, where the LLP suo moto realizes that it had made an error in filing particular(s) of the form filed with the ROC?

A193. Once an e-form has been filed, it cannot be rectified, unless the concerned MCA office has marked the status of the SRN as “Re-submission” required.

Q194. What does the transaction status of SRN “Required Resubmission” indicates?

A194. The transaction status of SRN “Required Resubmission” indicates that the LLP is required to re-submit the e-form by rectifying the defect(s)/ incompleteness as pointed out by the concerned MCA office, before the due date mentioned in the status of that SRN.

In case, the deadline for re-submission has been passed and the LLP failed to re-submit such e-form within such prescribed period, then the LLP will be required to file the e-form afresh with payment of fee and additional fee, as applicable

Q195. When is the “Addendum” form required to be filed?

A195. Whenever the transaction status of the SRN is “Waiting for user clarification”, the “Addendum” form is required to be filed to rectify the defects pointed out or furnish further information/ document(s) called for by the concerned MCA office.

Do not use “Addendum” in case the status of SRN is “Required Resubmission” since ‘addendum’ will not be processed against ‘Resubmission’ status and the correct procedure in case of SRN “Required Resubmission” is to file the e-form again correctly and against the original SRN only.

Q196. What shall be done, in case where further information pertaining to the e-form filed earlier has been called for by the ROC but such information has been partially furnished by the LLP?

A196. In case where the LLP is in receipt of intimation from ROC asking for further information or rectification of defects or incompleteness in the application or e-Form or document furnished earlier, and in response to such intimation such further information called for has not been provided or has been furnished partially or has not been provided or defects or incompleteness has not been rectified or has been rectified partially or has not been rectified to the satisfaction of the Registrar within the period allowed, then the Registrar will either reject or treat and label such application or e-Form or document as "invalid" in the electronic record, and will not take into record such application/ e-form/ document.

And upon such an action by the Registrar, such document may be rectified by the LLP only through fresh filing with payment of fee and additional fee as applicable, without prejudice to any other liability under the Act.

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Q197. How shall the e-forms submitted by the LLP with the Registrar be authenticated?

A197. Every form or application or document or declaration required to be filed or delivered to the Registrar through the portal maintained by the MCA on its website www.mca.gov.in or through any other website approved by the CG shall be authenticated by a partner or designated partner of the LLP by the use of a valid digital signature⁴

Q198. Which class of Digital Signature Certificate (DSC) shall be considered as valid for the purpose of authentication of e-Form by partner/designated partner?

A198. The DSC belonging to class II or Class III specification under the Information Technology Act, 2000. shall be considered as valid for the purpose of authentication of e-form.

Q199. Whether the DSC belonging to Class II or III which is used for the purpose of filing of Income Tax forms can be used for the filings under MCA21 or a fresh DSC is required to be obtained?

A199. A person who already has the specified DSC for any other application such as for income tax purposes etc. can use the same for filings under MCA21 and is not required to obtain a fresh DSC.

Q200. While pre-scrutinizing the e-form, it shows an error that the “DSC of the Designated Partner is not registered”, what is to be done in such a case?

A200. Before affixing the DSC of the Designated Partner on the e-form, it shall be registered on the MCA website.

The link for registering the DSC is <http://www.mca.gov.in/mcafoportal/showAssociateDSC.do>

Q201. What shall be done, where the size of the e-form exceeds the permissible size to be uploaded at the portal?

A201. The following measures can be taken to keep the size of the e-form minimum:

⁴ The web-based form “Companies affirmation of readiness towards COVID-19” is not required to be authenticated using DSC, only OTP verification is required.

- While signing the e-form click on 'Sign and save as' option to affix the DSC
- Pdf documents that are required to be attached to the e-form is recommended to be scanned in 'black and white mode' at 200 dpi resolution.
- In Adobe Acrobat, under the edit tab, click on preferences and select the categories as "Signature", thereafter click on "More" available under the 'creation and appearance' tab of signatures and uncheck the "include signature's revocation status" box to reduce the size of the pdf.

Q202. What is the maximum period that Registrar may allow for furnishing further information or for rectification of defects or incompleteness or for resubmission of application/e-Form/document?

A202. The maximum period(s) allowed by Registrar for furnishing further information or for rectification of defects or in-completeness or for resubmission of application/e-Form/document shall not exceed thirty days in aggregate.⁵

Q203. What is the provision w.r.t payment off additional fee?

A203. Any document or return required to be filed or registered under the Act with the Registrar, if, is not so filed or registered within the time provided therein, may be filed or registered after that time upto a period of 300 days from the date within which it should have been filed, on payment of additional fee of Rs 100 for every day of such delay in addition to any fee as is payable for filing of such document or return.

Q204. What are the consequences of non-compliance of any order of Tribunal under the Act?

⁵ SRNs where last date of resubmission (RSUB) falls between 15th March 2020 to 31st July 2020, additional 15 days would be allowed from 31st July 2020 for resubmission. However, for SRNs already marked under NTBR, extension would be provided on case to case basis. Note: Forms will not get marked to (Not to be taken on Record)'NTBR' due to non-resubmission during this extended period as detailed above.

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A204. Whoever fails to comply with any order made by the Tribunal under any provision of the Act shall be punishable with imprisonment which may extend to six months and shall also be liable to a fine which shall not be less than fifty thousand rupees

Q205. What is the prescribed punishment or penalty for the offence(s) for which no punishment is expressly provided under the Act?

A205. Any offence under the act for which no punishment is expressly provided shall be punishable with a fine which may extend to five lakh rupees but shall not be less than five thousand rupees and with a further fine which may extend to fifty rupees for every day after the first day after which the default continues

Q206. Can payment of fees/additional fees for the e-filing of forms be made through Debit Card?

A206. Yes, payment can be made electronically through credit card/Debit Cards or Internet Banking.

Even a person not having a credit card/debit card or Internet banking facility, can make payment of the fees/ additional fees through offline mode at the counter of an authorized bank through the pre-filled challan generated by the system after e-Filing.

Chapter-XIII

Relaxation from Regulatory Compliances due to COVID-19

The Ministry of Corporate Affairs has provided a one-time opportunity to the LLPs to make good their default by filing pending documents and to serve as a compliant LLP in future by introducing LLP Settlement Scheme, 2020 vide General Circular No 06/2020 dated 4th March, 2020 which was applicable from 16th March, 2020 to 31st March, 2020.

In continuation of the above Circular dated 4th March, 2020, and in order to support and enable Limited Liability Partnerships (LLPs) registered in India to focus on taking necessary measures to address the COVID-19 threat and to reduce the compliance burden, certain modifications to the above Circular have been made on 30th March, 2020 and it has been decided to be implemented w.e.f 1st April, 2020 to 31st December, 2020⁶.

There are two LLP Settlement Schemes

1. Original Scheme launched on 4th March, 2020 - Applicable from 16th March, 2020 to 31st March, 2020 (both inclusive)
2. Scheme launched on 30th March, 2020 - Applicable from 1st April, 2020 to 31st December, 2020 (both inclusive)

Frequently Asked Questions on the Original Scheme launched on 4th March, 2020 which is applicable from 16th March, 2020 to 31st March, 2020 (both inclusive)

Q207. What is LLP Settlement Scheme, 2020?

A207. "LLP Settlement Scheme, 2020" is a scheme to give a Onetime relaxation in additional fees to the defaulting LLPs to make good their default by filing pending documents viz.

Form Nos 3, 4, 8 and 11 and to serve as a compliant LLP in future. Refer General Circular No 13/2020 available at the link – http://www.mca.gov.in/Ministry/pdf/GeneralCircular06_04032020.pdf

⁶ MCA General Circular 31/2020 dated 28.09.2020

Frequently Asked Questions on Limited Liability Partnership Act, 2008

Q208. What is the objective of this Scheme?

A208. The Ministry of Corporate Affairs, as part of Government's constant efforts to promote ease of doing business, has decided to introduce a scheme namely "LLP Settlement Scheme, 2020", by allowing a One-time condonation of delay in filing statutorily required documents with the Registrar

Q209. Whether this Scheme is permanent?

A209. No. It is one time relaxation, as part of Government's constant efforts to promote ease of doing business it has been decided to give a Onetime relaxation in additional fees to the defaulting LLPs to make good their default by filing certain pending documents and to serve as a compliant LLP in future.

Q210. What is the time period of the Scheme?

A210. The Scheme shall come into force on the 16th March, 2020 and shall remain effective up to 31st March, 2020 (both days inclusive)

Q211. What is defaulting LLP as per the Scheme?

A211. "Defaulting LLP" means a LLP registered under the Limited Liability Partnership Act, 2008 which has made a default in filing of documents on the due date(s) specified under the LLP Act, 2008 and rules made there under

Q212. Whether an LLP is required to file an application to the Registrar to avail the Scheme?

A212. No, the defaulting LLPs may themselves avail of the scheme for filing documents which have not been filed or registered in time on payment of additional fee and statutory fee

Q213. What shall be the manner of payment of fees and additional fee on filing belated document for seeking immunity under the Scheme?

A213. Under the scheme, for the belated documents, the LLP shall pay

- Statutory filing fees as prescribed under the LLP Act and rules made there under along with
- an additional fee of Rs 10 per day, provided that such payment of additional fee shall not exceed Rs. 5,000/- per document.

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Q214. Whether additional fee of Rs. 10 per day is for all forms in aggregate or individually?

A214. Additional fee of Rs 10 per day is payable per document and not in aggregate. Thus, if there is there is delay of 300 days for one form and 330 days for another form, then for the form where delay is 300 days, additional fee will be Rs. 3,000 and for another form where delay is for 330 days, additional fee will be Rs. 3,300.

Q215. Whether cap of Rs. 5,000/- on additional fee is for all forms in aggregate or individually?

A215. Cap on additional fee of Rs 5,000 is applicable per document and not in aggregate. Thus, if there is there is delay of 900 days, then additional fee for the form at the rate of Rs. 10 per day works out to Rs. 9,000 which is more than Rs. 5,000 and therefore additional fee will be Rs. 5,000 for the form

Q216. On which filing the Scheme shall be applicable?

A216. Scheme shall be applicable only on filing of following documents:

- Form-3- Information with regard to limited liability partnership agreement and changes, if any, made therein;
- Form-4- Notice of appointment, cessation, change in name/ address/ designation of a designated partner or partner and consent to become a partner/ designated partner;
- Form-S; Statement of Account & Solvency (Annual or Interim);
- Form-11- Annual Return of Limited Liability Partnership (LLP).

Q217. The Scheme shall be applicable for delay in submission of any form applicable to LLP?

A217. No. The Scheme is not applicable to any form other than Form No. 3, Form No. 4, Form No. 8 and Form No. 11.

Q218. For which LLPs this Scheme is not applicable?

A218. This Scheme shall not apply to LLPs which have made an application in Form 24 to the Registrar, for striking off its name from the register as per provisions of Rule 37(1) of the LLP Rules, 2009.

Frequently Asked Questions on Limited Liability Partnership Act, 2008

Q219. Documents for which period in the past, a defaulting LLP is permitted to file?

A219. "Defaulting LLP" is permitted to file belated documents, which were due for filing till 31st October, 2019 in accordance with the provisions of this Scheme

Q220. Is there any immunity from prosecution in respect of document(s) filed under the scheme?

A220. Yes, the defaulting LLPs, which have filed their pending documents till 31st March, 2020 and made good the default, shall not be subjected to prosecution by Registrar for such defaults.

Q221. What action Registrar can take on the defaulting LLPs which have not availed this Scheme after conclusion of the same?

A221. On the conclusion of the Scheme, the Registrar shall take necessary action under the LLP Act, 2008 against the LLPs which have not availed this Scheme and are in default in filing of documents as required under the provisions of LLP Act, 2008 in a timely manner. The defaulting LLPs may be subjected to prosecution by Registrar for such defaults.

(These FAQs were issued on 11th March, 2020 and there is no change in the same except the change in the validity of the Scheme upto 31st March, 2020)

Q222. What happens to the forms submitted till 31st March, 2020 under the Original Scheme as per provisions therein contained?

A222. Forms furnished till 31st March, 2020 under the Original Scheme as per provisions therein contained are valid and afford immunity stated in the said scheme and which

Q223. Whether additional fee of Rs. 10 per day paid under the Original Scheme can be refunded?

A223. No

Relaxation from Regulatory Compliances due to COVID-19

Frequently Asked Questions on the Scheme launched on 30th March, 2020 applicable from 1st April, 2020 to 31st December, 2020

Q224. What is revised LLP Settlement Scheme, 2020?

A224. Revised "LLP Settlement Scheme, 2020" is a scheme to give one-time waiver of additional filing fees for delayed filings by the LLPs with the Registrar of Companies during the currency of the Schemes, i.e. during the period starting from 1st April, 2020 and ending on 31st December, 2020. Refer General Circular No 13/2020 available at the link

http://www.mca.gov.in/Ministry/pdf/GeneralCircular06_04032020.pdf and General Circular No 31/2020 available at the link - http://www.mca.gov.in/Ministry/pdf/GeneralCircularNo.31_28092020.pdf

Q225. What is the objective of this revised Scheme?

A225. The Ministry of Corporate Affairs, in order to support and enable Limited Liability Partnerships (LLPs) registered in India to focus on taking necessary measures to address the COVID-19 threat and to reduce the compliance burden, certain modifications to the General Circular 06/2020 and it has been decided to be implemented w.e.f. 1st April, 2020 to 31st December, 2020

Q226. What is the time period of the revised Scheme?

A226. Time period of the revised Scheme is from 1st April, 2020 and shall remain effective up to 31st December, 2020 (both days inclusive).

Q227. What is defaulting LLP as per the Scheme?

A227. "Defaulting LLP" means a LLP registered under the Limited Liability Partnership Act, 2008 which has made a default in filing of documents on the due date(s) specified under the LLP Act, 2008 and rules made there under. Contextually, the Defaulting LLP is one that has made a default in filing of documents on the due date(s) specified under the Act and not made good the default

Q228. What are belated documents as per the Scheme?

A228. "Belated documents" means all documents or forms which are required to be filed in the MCA 21 registry under the provisions of LLP Act, 2008 and rules made there under. Thus, all forms that are

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required to be filed under the provisions of LLP Act, 2008 and rules made there under.

Q229. Whether an LLP is required to file an application to the Registrar to avail the Scheme?

A229. No, the defaulting LLP may avail of the scheme for filing such forms and documents which have not been filed or registered in time and at the time of filing also pay statutory fees as are payable

Q230. What shall be the manner of payment of fees and additional fee on filing belated document for seeking immunity under the Scheme?

A230. Under the scheme, for the belated documents, the LLP shall pay Statutory filing fees as prescribed under the LLP Act and rules made there under.

Q231. Whether any additional fee payable for filing forms under this Scheme?

A231. No additional fee is payable for filing any belated document under the Scheme.

Q232. When the Scheme shall be applicable?

A232. Scheme shall be applicable on filing of all documents or forms along with payment of fees prescribed.

Q233. Which LLPs are ineligible for availing this Scheme is ~~not~~ applicable?

A233. This Scheme shall is not applicable to LLPs which have made an application in Form 24 to the Registrar, for striking off its name from the register as per provisions of Rule 37(1) of the LLP Rules, 2009

Q234. Documents for which period in the past, a defaulting LLP is permitted to file?

A234. "Defaulting LLP" is permitted to file belated documents, which were due for filing till 30th November, 2020⁷ in accordance with the provisions of this Scheme

⁷ MCA General Circular No37/2020 dated 09.11.2020 available at the link http://www.mca.gov.in/Ministry/pdf/GeneralCircularNo.37_09112020.pdf

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Q235. Is there any immunity from prosecution in respect of document(s) filed under the scheme?

A235. Yes, the defaulting LLPs, which have filed their pending documents till 31st December, 2020 and made good the default, shall not be subjected to prosecution by the Registrar for defaults in filing of forms and documents by the due date

Q236. What is the difference between the Original Scheme dated 4th March, 2020 and Revised Scheme dated 30th March, 2020?

A236. The Original Scheme dated 4th March, 2020 required LLPs to make payment of Additional fee of Rs 10 per day is payable per document subject to maximum of Additional fees not exceeding Rs. 5,000/- per document whereas no additional fees are payable under the Revised Scheme dated 30th March, 2020.

Further the Original Scheme was applicable only for four forms viz. Form Nos 3, 4, 8 and 11 whereas the Revised Scheme is applicable for all forms that are required to be filed under the provisions of LLP Act, 2008 and rules made there under.

Q237. What action Registrar can take on the defaulting LLPs which have not availed this Scheme after conclusion of the same?

A237. On the conclusion of the Scheme after 31st December, 2020, the Registrar shall take necessary action under the LLP Act, 2008 against the LLPs which have not availed this Scheme and are in default in filing of documents as required under the provisions of LLP Act, 2008 in a timely manner. The defaulting LLPs may be subjected to prosecution by Registrar for such defaults.

Chapter-XIV

Penalties and Prosecutions

S. No	Section No	Offence	Penalty
1.	Section 7(1) read with Section 10(1) of the LLP Act, 2008:	Contravention of provision of section 7(1) i.e. failure by LLP to have at least two designated partners who are individuals and at least one of them be a resident in India:	The limited liability partnership and its every partner shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to five lakh rupees.
2.	Section 7(4) read with Section 10 (2) of the LLP Act, 2008:	Failure by LLP to file with the registrar the particulars of every individual who has given his consent to act as designated partner in such form and manner as may be prescribed within thirty days of his appointment.	The limited liability partnership and its every partner shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees
3.	Section 7(5) read with Section 10 (2) of the LLP Act, 2008:	Failure of a designated partner to satisfy such conditions and requirements as may be prescribed.	The limited liability partnership and its every partner shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees
4.	Section 8 read with Section 10	Failure by the designated partner to comply with the	The limited liability partnership and its

Penalties and Prosecutions

S. No	Section No	Offence	Penalty
	(2) of the LLP Act, 2008:	following responsibilities, unless expressly provided otherwise in the Act: <ul style="list-style-type: none"> • 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 the Act including filing of any document, return, statement and the like report pursuant to the provisions of the Act and as may be specified in the limited liability partnership agreement 	every partner shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees.
5.	Section 9 read with Section 10 (2) of the LLP Act, 2008:	Failure by a LLP to appoint a designated partner within thirty days of a vacancy arising for any reason and provisions of sub-section (4) and sub-section (5) of section 7 are not adhered to in respect of such new designated partner	The limited liability partnership and its every partner shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees.
6.	Section 11 of the LLP Act, 2008:	If a person makes a statement under clause (c) of sub-section (1) of section 11 i.e. in an Incorporation document	He shall be punishable with imprisonment for a term which may extend to two years

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S. No	Section No	Offence	Penalty
		which he knows to be false or does not believe to be true.	and with fine which shall not be less than ten thousand rupees but which may extend to five lakh rupees.
7.	Section 13 of the LLP Act, 2008:	<p>Failure by a LLP to have a registered office to which all communications and notices may be addressed and shall be received.</p> <p>Failure by a LLP to file the notice of change of place of registered office with the Registrar in such form and manner and subject to such conditions as may be prescribed</p>	The limited liability partnership and its every partner shall be punishable with fine which shall not be less than two thousand rupees but which may extend to twenty-five thousand rupees.
8.	Section 17 the LLP Act, 2008:	Failure by the LLP to change its name, within three months after the date of the direction or such longer period as the Central Government may allow, in a situation where the CG is satisfied that the LLP has been registered (whether through inadvertence or otherwise and whether originally or by a change of name) under a name which is a name referred to in sub-section (2) of section 15; or is identical	The LLP shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to five lakh rupees and 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

Penalties and Prosecutions

S. No	Section No	Offence	Penalty
		with or too nearly resembles the name of any other limited liability partnership or body corporate or other name as to be likely to be mistaken for it.	one lakh rupees.
9.	Section 20 LLP Act, 2008:	If any person or persons carry on business under any name or title of which the words "Limited Liability Partnership" or "LLP" or any contraction or imitation thereof is or are the last word or words, without being duly incorporated as limited liability partnership.	Every such person or persons shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees.
10.	Section 21 of LLP Act, 2008:	LLP which fails to bear the following on its invoices, official correspondence: <ul style="list-style-type: none"> • the name, address of its registered office and registration number of the limited liability partnership; and • a statement that it is registered with limited liability. 	Limited liability partnership shall be punishable with fine which shall not be less than two thousand rupees but which may extend to twenty-five thousand rupees
11.	Section 25(1) read with section 25(5) of the LLP Act,	Failure by the partner to inform the LLP of any change in his name or address within a period of fifteen days of such	The partner of the limited liability partnership shall be punishable with fine which shall not be

Frequently Asked Questions on Limited Liability Partnership Act, 2008

S. No	Section No	Offence	Penalty
	2008:	change.	less than two thousand rupees but which may extend to twenty-five thousand rupees
12.	Section 25(2) read with Section 25(4) of the LLP Act, 2008:	Failure by a LLP to: <ul style="list-style-type: none"> • file a notice with the Registrar within thirty days from the date a person becomes or ceases to be a partner; and • file a notice with the Registrar within thirty days of change in the name or address of a partner 	The limited liability partnership and every designated partner of the limited liability partnership shall be punishable with fine which shall not be less than two thousand rupees but which may extend to twenty-five thousand rupees
13.	Section 30 (1) of the LLP Act, 2008:	Where any act is carried out by the LLP, or any of its partner with intent to defraud creditors of the limited liability partnership or any other person, or for any fraudulent purpose.	The liability of the LLP and partners who acted with intent to defraud creditors or for any fraudulent purpose shall be unlimited for all or any of the debts or other liabilities of the LLP. However, in case any such act is carried out by a partner, the LLP is liable to the same extent as the partner unless it is established by the

Penalties and Prosecutions

S. No	Section No	Offence	Penalty
			LLP that such act was without the knowledge or the authority of the LLP.
14.	Section 30 (2) of the LLP Act, 2008:	Where any business is carried on with such intent to defraud creditors of the limited liability partnership or any other person, or for any fraudulent purpose	Every person who was knowingly a party to the carrying on of the business in the manner aforesaid shall be punishable with imprisonment for a term which may extend to two years and with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees.
15.	Section 30(3) of the LLP Act, 2008:	Where a limited liability partnership or any partner or designated partner or employee of such limited liability partnership has conducted the affairs of the limited liability partnership in a fraudulent manner.	Without prejudice to any criminal proceedings which may arise under any law for the time being in force, the limited liability partnership and any such partner or designated partner or employee shall be liable to pay compensation to any person who has suffered any loss or

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S. No	Section No	Offence	Penalty
			<p>damage by reason of such conduct.</p> <p>However, such limited liability partnership shall not be liable if any such partner or designated partner or employee has acted fraudulently without knowledge of the limited liability partnership.</p>
16.	Section 34 of the LLP Act, 2008:	<p>Failure to comply with the following requirements of the Act</p> <ul style="list-style-type: none"> • Maintain proper books of account relating to its affairs for each year of its existence • maintain the same at its registered office for such period as may be prescribed. • Prepare within a period of six months from the end of each financial year, 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, 	<p>The limited liability partnership 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</p>

Penalties and Prosecutions

S. No	Section No	Offence	Penalty
		<ul style="list-style-type: none"> • Get the statement signed by the designated partners of the LLP. • file within the prescribed time, the Statement of Account and Solvency prepared pursuant to sub-section (2) with the Registrar every year in such form and manner and accompanied by such fees as may be prescribed. • Get the accounts audited of limited liability partnerships in accordance with such rules as may be prescribed 	
17.	Section 35 of the LLP Act, 2008:	<p>Failure by a limited liability partnership to file an annual return duly authenticated with the Registrar within sixty days of closure of its financial year in such form and manner and accompanied by such fee as may be prescribed.</p>	<p>The limited liability partnership shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees and the designated partner of such limited liability partnership shall be punishable with fine which shall not be</p>

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S. No	Section No	Offence	Penalty
			less than ten thousand rupees but which may extend to one lakh rupees.
18.	Section 37 of the LLP Act, 2008:	If in any return, statement or other document required by or for the purposes of any of the provisions of the Act and any person makes a statement which is false in any material particular, knowing it to be false or which omits any material fact knowing it to be material.	He shall, save as otherwise expressly provided in the Act, be punishable with imprisonment for a term which may extend to two years, and shall also be liable to fine which may extend to five lakh rupees but which shall not be less than one lakh rupees
19.	Section 38 of the LLP Act, 2008:	Failure to comply with the summons or requisition of the Registrar under section 38, without a lawful excuse	Such person shall be punishable with fine which shall not be less than two thousand rupees but which may extend to twenty-five thousand rupees
20.	Section 47 of the LLP Act, 2008:	If any person fails without reasonable cause or refuses— <ul style="list-style-type: none"> • to produce before an inspector or any person authorized by him in this behalf with the previous approval of the CG any book or 	Such person shall be punishable with fine which shall not be less than two thousand rupees but which may extend to twenty-five thousand rupees and with a further fine which

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S. No	Section No	Offence	Penalty
		<p>paper which it is his duty under sub-section (1) or sub-section (2) of section 47 to produce; or</p> <ul style="list-style-type: none"> • to furnish any information which is his duty under sub-section (2) of section 47 to furnish; or • to appear before the inspector personally when required to do so under section 47(4) or to answer any question which is put to him by the inspector in pursuance of that sub-section; or • to sign the notes of any examination 	<p>shall not be less than fifty rupees but which may extend to five hundred rupees for every day after the first day after which the default continues</p>
21.	Section 60 of the LLP Act, 2008	Default in filing an order made by the Tribunal under sub-section (2) of section 60 with the Registrar within thirty days	The limited liability partnership, and every designated partner of the limited liability partnership shall be punishable with fine which may extend to one lakh rupees.
22.	Section 62 of the LLP Act, 2008:	Default in complying with the requirement w.r.t filing of certified copy of the order of the Tribunal with the Registrar for	The limited liability partnership, every designated partner of the limited liability partnership shall be

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S. No	Section No	Offence	Penalty
		registration within thirty days after the making of an order under this section (Section-62)	punishable with fine which may extend to fifty thousand rupees
23.	Section 70 of the LLP Act, 2008:	Enhanced punishment- In case a limited liability partnership or any partner or designated partner of such limited liability partnership commits any offence, for the second or subsequent offence,	Such LLP/ Partner/ Designated Partner shall be punishable with imprisonment as provided, but in case of offences for which fine is prescribed either along with or exclusive of imprisonment, with fine which shall be twice the amount of fine for such offence.
24.	Section 73 of the LLP Act, 2008:	non-compliance of any order passed by Tribunal under the Act.	Any such person shall be punishable with imprisonment which may extend to six months and shall also be liable to a fine which shall not be less than fifty thousand rupees.
25.	Section 74 of the LLP Act, 2008:	General penalties: Any person guilty of an offence under the Act for which no punishment is expressly provided under the Act	Any such person shall be liable to a fine which may extend to five lakh rupees but which shall not be less than five thousand rupees and with a further fine which may extend to fifty rupees for every day after

Penalties and Prosecutions

S. No	Section No	Offence	Penalty
			the first day after which the default continues.
26.	Para 17 of the Second Schedule of the LLP Act, 2008:	Failure by the LLP to bear the following on every official correspondence for a period of twelve months commencing not later than fourteen days after the date of registration: <ul style="list-style-type: none"> • a statement that it was, as from the date of registration, converted from a firm into a limited liability partnership; and • the name and registration number, if applicable, of the firm from which it was converted. 	The LLP shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees and with a further fine which shall not be less than fifty rupees but which may extend to five hundred rupees for every day after the first day after which the default continues.
27.	Para 15 of the Third Schedule of the LLP Act, 2008:	Failure by the LLP to bear the following on every official correspondence for a period of twelve months commencing not later than fourteen days after the date of registration: <ul style="list-style-type: none"> • a statement that it was, as from the date of registration, converted from a company into a limited liability partnership; and • the name and 	The LLP shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees and with a further fine which shall not be less than fifty rupees but which may extend to five hundred rupees for every day after the first day after which the default continues.

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S. No	Section No	Offence	Penalty
		registration number of the company from which it was converted.	
28.	Para 16 of the Fourth Schedule of the LLP Act, 2008):	Failure by the LLP to bear the following on every official correspondence for a period of twelve months commencing not later than fourteen days after the date of registration: <ul style="list-style-type: none"> • a statement that it was, as from the date of registration, converted from a company into a limited liability partnership; and • the name and registration number of the company from which it was converted 	The LLP shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees and with a further fine which shall not be less than fifty rupees but which may extend to five hundred rupees for every day after the first day after which the default continues.

Annexure “A”

For registration of Limited Liability Partnership including conversion of a firm or a private company or an unlisted public company into Limited Liability Partnership:

Particulars	Fees Amt.
a) Limited Liability Partnership whose contribution does not exceed Rs. 1 lakh	Rs. 500/-
b) Limited Liability Partnership whose contribution exceeds Rs. 1 lakh but does not exceed Rs. 5 lakhs	Rs. 2000/-
c) Limited Liability Partnership whose contribution exceeds Rs. 5 lakhs but does not exceed Rs. 10 lakhs	Rs. 4000/-
d) Limited Liability Partnership whose contribution exceeds Rs. 10 lakh	Rs. 5000/-

1. The difference between the fees payable on the increased slab of contribution and the fees paid on the preceding slab of contribution shall be paid through Form 3.
2. For filing, registering or recording any document, form, statement, notice, Statement of Accounts and Solvency, annual return and an application along with the Statement for conversion of a firm or a private company or an unlisted public company into LLP by this Act or by these rules required or authorized to be filed, registered or recorded:

Particulars	Fees Amt.
a) Limited Liability Partnership whose contribution does not exceed Rs. 1 lakh	Rs. 50/-
b) Limited Liability Partnership whose contribution exceeds Rs. 1 lakh but does not exceed Rs. 5 lakhs	Rs. 100/-
c) Limited Liability Partnership whose contribution exceeds Rs. 5 lakhs but does not exceed Rs. 10 lakhs	Rs. 150/-
d) Limited Liability Partnership whose contribution exceeds Rs. 10 lakh	Rs. 200/-

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Fee for any application other than application for conversion of a firm or a private company or an unlisted public company into LLP shall be as under:-

Particulars	Fees Amt.
a) An application for reservation of name u/s 16	Rs 200/-
b) An application for direction to change the name u/s 18	Rs. 10000/-
c) Application for reservation of name under Rule 18(3)	Rs. 10,000/-
d) Application for renewal of name under rule 18(3)	Rs. 5000/-
e) Application for obtaining DPIN under rule 10(5)	Rs.100/-

1. Fee for inspection of documents or for obtaining certified copy thereof shall be as under:-

Particulars	Fees Amt.
a) For inspection of documents of an LLP under section 36	Rs. 50/-
b) For Copy or extract of any document under section 36 to be certified by Registrar	Rs. 5/- per page or fractional part thereof

2. Fee for filing any form or a Statement of Account and Solvency or a notice or a document by foreign limited liability partnership

Particulars	Fees Amt.
a) For filing a document under rule 34(1)	Rs.5000/-
b) Any other form or Statement of Account and Solvency or notice or document	Rs.1000/-