

LIMITED LIABILITY PARTNERSHIP (LLP)

LLP Agreement – drafting &
interpretations

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LLP Act, 2008 & Rules 2009 with relevant amendments

- **Highlights:**

- Provisions are based on Nareshchandra Committee & J J Irani Committee recommendations.
- It is a separate legal entity – it is a body corporate.
- Members from different profession can form LLP.
- Even body corporate can be a partner.

LLP Act, 2008 & Rules 2009 with relevant amendments

- **Highlights:**
- One out of minimum two partners – must be resident Indian.
- Designated partner must have DIN.
- Subscribers to Incorporation documents will be Partners.
- In case of fraud – liability of that partner can be unlimited.

LLP Act, 2008 & Rules 2009 with relevant amendments

- **Highlights:**
- Contribution from Partners – can be tangible, intangible, movable, immovable...
- Filing of Statements of Accounts and Solvency – within 6 months.
- Audit mandatory – if contribution more than 25.00 lacs or turnover is more than 40.00 lacs
- Annual Return within 60 days

LLP Act, 2008 & Rules 2009 with relevant amendments

- **Highlights:**
- Right to Profit and distribution is transferable.
- Mere transfer of partners' share will noty entitle the transferee/assignee to participate in the management of LLP.
- Firm, Pvt. Co. Unlisted Pub Co. can be converted into LLP.
- Whistleblower provisions can be invoked.

LLP Act, 2008 & Rules 2009 with relevant amendments

- **Highlights: Foreign LLP :**
- Within 30 days of establishment of place of business in India file form 27 with relevant attachments.
- If FLLP is a part of Commonwealth Nations then documents to be certified by official, Notary of the country of origin.
- If FLLP is a party who is signatory to Heaque Treaty – then it has to follow rules of country of origin.

LLP Act, 2008 & Rules 2009 with relevant amendments

- **Highlights:**

- LLP Agreement is mandatory – if not made provisions of schedule 1 will be applicable.
- Provisions of C A 2013 by notification could be made applicable to LLP. – especially administrative and reporting provisions.
- Designated Partner need not be Partner of LLP.

Some Points to ponder upon

- In UK LLP is pass thru' entity – it means profit could be distributed to partners and then it is taxed in the hands of partners.
- In India LLP is subject to Income Tax and MAT.
- In China LLP is known as 'Special General Partnership' – LLP form is allowed only to knowledge based professions and technical services industries.

Some Points to ponder upon

- In Germany also it is pass thru' entity.
- It does not enjoy separate co status but gets some benefits like co. can sue and can be sued, can own property, can act in its own name.
- In UK LLP partners have collective responsibility but not responsible for each other's fraudulent activities.

Some Points to ponder upon

- In some states of US LLP can be formed only for professional services – Collapse of Real Estate and energy sector is the trigger – where lawyers were made responsible for their opinions.
- A member of LLP should not be regarded as employee of LLP unless agreement overtly provides for the same.
Clyde & Co. v/s Bates van.
- Aurther Anderson LLP v/s US
- Instructions to employees to destroy the documents whether fraudulent.
- Satyam case – only Indian partners were held responsible.

LLP Agreement – Important Clauses

- Date, parties (which can include body corporate),
- Whereas – narrative/preamble part – important from legal interpretations point of view – it helps court to interpret the minds of the parties and their intentions.
- Key terms to be defined – designated partners, partners, contribution, applicability of Schedule 1

LLP Agreement – Important Clauses – Cont.....

- Operative Part –
 - Name of LLP – as approved by MCA
 - Name of the partners & designated Partners.
 - Contribution – in cash, tangible, intangible, movable, immovable form – it has to be valued by CA, ICW or Registered Valuer. **Any increase or decrease should be with the permission of all the partners.**
 - Common Seal – with sign of any designated Partner.

LLP Agreement – Important Clauses – Cont.....

- **Sharing Of Profits –**

- in the ratio of contributions OR
- in the ratio of voting rights OR
- in the ratio as may be determined by majority of Partners or all the Partners.

LLP Agreement – Important Clauses – Cont.....

- **Voting Rights –**

- as specified in the agreement OR
- in the ratio of respective contribution OR
- in the ratio of respective profit sharing OR
- such ratio as may be determined by majority of partners OR
- such ration as may be determined by all the partners.

LLP Agreement – Important Clauses – Cont.....

- Main Business – check for respective councils – e.g. Council of Architecture does not allow, CA,CS allow.
- Ancillary Business – it can be described by way of Schedule
- Other Business – it can be described by way of Schedule.

LLP Agreement – Important Clauses – Cont.....

- **Profit Sharing Ratio –**

- in the proportion of their contribution OR
- in the ratio of their voting rights OR
- in such proportion as may be agreed upon in the agreement. OR
- such ratio as may determined by majority of partners OR
- such ratio as may be decided by all the partners.

LLP Agreement – Important Clauses – Cont.....

- **Partners – Admission** – either of the following conditions –
 - consent from all the existing partners,
 - consent from majority of partners,
 - consent from specified no. of partners,
 - consent from such partners who have contributed specified amount in the contribution.
 - such no of partners carrying voting rights of specified percentage.

LLP Agreement – Important Clauses – Cont.....

- Resignation/Retirement –
 - Notice in writing of 30 days of his intention or such early date as may be agreed to by existing partners.
 - on the effective date accounts are taken as closed as settlement is done, any recovery from outgoing partner within 3 months.
 - Business of LLP is continued by remaining/continuing partners.

LLP Agreement – Important Clauses – Cont.....

- Death –
 - On the death of one of the parties, other parties agree to induct spouse within 30 days if not children in the same proportion.
- Removal –
 - can not be removed by other partners unless he is found guilty of fraudulent activities OR by giving 30 days notice with an opportunity of being heard.

LLP Agreement – Important Clauses – Cont.....

- Rights of a Partner –
 - In all the assets and properties in the proportion of their contribution.
 - continue of newly undertake business without using the name of LLP.
 - shall have access to books of accounts, records, documents.

LLP Agreement – Important Clauses – Cont.....

- **Duties –**

- account for any benefit, profit without consent of other partners, at the cost of other partners.
- to keep other partners indemnified against any loss suffered by other partners because of his fraudulent activities.

LLP Agreement – Important Clauses – Cont.....

- **Meetings –**

- one or more meetings at such time at such intervals as may be decided by all, majority or such no of partners specified in the agreement.

- **Proxy –**

- similar provisions like C A 2013

- **Quorum –**

- Two partners present in person. Other provisions are same like C A 2013

LLP Agreement – Important Clauses – Cont.....

- Designated Partner – **Appointment**
 - Partners at the time of incorporation shall ordinarily act as designated partners.
 - they can appoint other member, who may not be a partner as designated partner.
 - at any time it should not be less than two.
- **Resignation/Removal –**
 - by notice in writing of 30 days. Such vacancy to be filled in within 2 months.

LLP Agreement – Important Clauses – Cont.....

- **Transfer or assignment of right/interest –**
 - has to offer to transfer, assign his right/interest to other continuing partners by giving 15 days notice.
 - if no communication then can transfer to any person in the market by execution of agreement/deed and intimate to existing partners within 30 days.

LLP Agreement – Important Clauses – Cont.....

- Borrowing Powers –
- Appointment of Auditors –
- Powers of Designated Partners –
 - same like that under C A 2013 of MD.

LLP Agreement – Important Clauses – Cont.....

- Accounting Year –
- Books of Account –
- Indemnity – for any personal liability incurred by the partner.

LLP Agreement – Important Clauses – Cont.....

- Opening of Bank Accounts –
- Dispute settlement – Arbitration – **only if provided in the agreement.**
- Winding –up -

Keep in touch

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THANK YOU