

About the Limited Liability Partnership Act, 2008

About the Limited Liability Partnership (LLP)

LLP is an alternative corporate business structure that gives the benefits of limited liability of a company and the flexibility of a partnership. LLP is an organised form of business and operates on the basis of an agreement. It provides greater operational flexibility without relatively lesser compliance requirements, as compared to a company. Since LLP contains elements of both 'a corporate structure' as well as 'a partnership firm structure', LLP is called a hybrid of a company and a partnership.

LLP is governed by the Limited Liability Partnership Act, 2008 read with Rules framed thereunder. Further, the provisions of the Indian Partnership Act, 1932 are not applicable to an LLP.

LLP is an agreement-based structure. Unlike traditional partnership firms, under the LLP structure, liability of the LLP shall be limited to the extent of the assets of the LLP.

The liability of its partners shall be limited to the extent of the agreed contribution. Further, no partner shall be liable on account of the independent or unauthorised acts of other partners. Individual partners are, thus, shielded from joint liability created by another partner's wrongful acts or misconduct.

LLP shall be a **body corporate** and a **legal entity** separate from its partners. It will have **perpetual succession**. Any change in the partners of an LLP shall not affect the existence, rights or liabilities of the LLP. The salient features of an LLP are:

- LLP can continue its existence irrespective of changes in partners.
- LLP is capable of entering into contracts and holding property in its own name.
- LLP being a separate legal entity, is liable to the full extent of its assets but liability of the partners is limited to their agreed contribution in the LLP.
- Liability of the LLP is limited to the extent of its assets.
- No partner is liable on account of the independent or unauthorised actions of other partners. Thus, the individual partners are shielded from joint liability created by another partner's wrongful acts, business decisions or misconduct.
- Mutual rights and duties of the partners of an LLP are governed by an agreement between the partners or between the partners and the LLP, as the case may be (which is called LLP Agreement).

The Limited Liability Partnership Act, 2008 – Legislative History & Evolution

The Limited Liability Partnership Act, 2008 is an Act to make provisions for the formation and regulation of LLPs and for matters connected therewith.

The Statement of Objects and Reasons placed before the Parliament at the time of introduction of the Limited Liability Partnership Bill, 2008 provided that –

- With the growth of the Indian economy, the role played by its entrepreneurs as well as its technical and professional manpower has been acknowledged internationally. It is felt opportune that entrepreneurship, knowledge and risk capital combine to provide a further impetus to India's economic growth. In this background, a need has been felt for a new corporate form that would provide an alternative to the traditional partnership, with unlimited personal liability on the one hand, and the statute-based governance structure of the limited liability company on the other, in order to enable professional expertise and entrepreneurial initiative to combine, organise and operate in flexible, innovative and efficient manner.
- The LLP is viewed as an alternative corporate business vehicle that provides the benefits of limited liability but allows its members the flexibility of organising their internal structure as a partnership based on a mutually arrived agreement. The LLP form would enable entrepreneurs, professionals and enterprises providing services of any kind or engaged in scientific and technical disciplines, to form commercially efficient vehicles suited to their requirements. Owing to flexibility in its structure and operation, the LLP would also be a suitable vehicle for small enterprises and for investment by venture capital.

Initially, the Limited Liability Partnership Bill, 2006 was introduced in the Rajya Sabha on 15th December, 2006 and was referred to the Parliamentary Standing Committee on Finance. In its report submitted on 27th November, 2007, the Parliamentary Standing Committee suggested extensive changes. Taking into consideration the suggestions of the Parliamentary Standing Committee, the Government decided to introduce the Bill afresh and withdrew the Limited Liability Partnership Bill, 2006. Later, the Limited Liability Partnership Bill, 2008 was introduced in the Rajya Sabha on 21st October, 2008, which was passed by the Rajya Sabha on 24th October, 2008. Subsequently, the Bill was passed by the Lok Sabha on 12th December 2008. The Bill received the assent of the President on 7th January, 2009 and was notified as the Limited Liability Partnership Act, 2008 (No. 6 of 2009) ('LLP Act' or 'Act') in the Official Gazette of India on 9th January 2009.

The salient features of the Limited Liability Partnership Bill, 2008, *inter alia*, were as follows:-

- (i) the LLP shall be a body corporate and a legal entity separate from its partners. Any two or more persons, associated for carrying on a lawful business with a view to profit, may by subscribing their names to an incorporation document and filing the same with the Registrar, form a Limited Liability Partnership. The LLP will have perpetual succession;
- (ii) the mutual rights and duties of partners of an LLP *inter se* and those of the LLP and its partners shall be governed by an agreement between partners or between the LLP and the partners subject to the provisions of the proposed legislation. The Bill, if enacted, would provide flexibility to devise the agreement as per their choice. In the absence of any such agreement, the mutual rights and duties shall be governed by the provisions of proposed legislation;
- (iii) the LLP will be a separate legal entity, liable to the full extent of its assets, with the liability of the partners being limited to their agreed contribution in the LLP which may be of tangible or intangible nature or both. No partner would be liable on account of the independent or unauthorised actions of other partners or their misconduct. The liabilities of the LLP and partners who are found to have 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;
- (iv) every LLP shall have at least two partners and shall also have at least two individuals as Designated Partners, of whom at least one shall be resident in India. The duties and obligations of Designated Partners shall be as provided in the law;
- (v) the LLP shall be under an obligation to maintain annual accounts reflecting true and fair view of its state of affairs. A statement of accounts and solvency shall be filed by every LLP with the Registrar every year. The accounts of LLPs shall also be audited, subject to any class of LLPs being exempted from this requirement by the Central Government;
- (vi) the Central Government shall have powers to investigate the affairs of an LLP, if required, by appointment of competent Inspector for the purpose;
- (vii) the compromise or arrangement including merger and amalgamation of LLPs shall be in accordance with the provisions of the proposed legislation;
- (viii) a firm, private company or an unlisted public company would be allowed to be converted into LLP in accordance with the provisions of the proposed Bill. Upon such conversion, on and from the date of certificate of registration issued by the Registrar in this regard, the effects of the conversion shall be such as are specified in the proposed Bill. On and from the date of registration specified in the certificate of registration, all tangible (movable or immovable) and intangible property vested in the firm or the company, all assets, interests, rights, privileges, liabilities, obligations relating to the

firm or the company, and the whole of the undertaking of the firm or the company, shall be transferred to and shall vest in the LLP without further assurance, act or deed and the firm or the company, shall be deemed to be dissolved and removed from the records of the Registrar of Firms or Registrar of Companies, as the case may be;

- (ix) the winding up of the LLP may be either voluntary or by the Tribunal to be established under the Companies Act, 1956. Till the Tribunal is established, the power in this regard has been given to the High Court;
- (x) the proposed legislation would confer powers on the Central Government to apply provisions of the Companies Act, 1956 as appropriate, by notification with such changes or modifications as deemed necessary. However, such notifications shall be laid in draft before each House of Parliament for a total period of 30 days and shall be subject to any modification as may be approved by both Houses;
- (xi) the Indian Partnership Act, 1932 shall not be applicable to LLPs.

Notification of the LLP Act, 2008 and the LLP Rules, 2009

The Government *vide* Notification S.O. 891(E), dated 31st March, 2009 appointed 31st March, 2009, as the date on which the various sections of the LLP Act came into force. Subsequently, the Government, *vide* Notification No. S.O. 1323(E), dated 22nd May 2009, appointed 31st May, 2009, as the date on which the provisions of sections 55–58, Second Schedule, Third Schedule and Fourth Schedule of the LLP Act will come into force.

The Government *vide* Notification No. G.S.R. 229 (E), dated 1st April, 2009 notified the Limited Liability Partnership Rules, 2009 ('LLP Rules'). Rules 1–31, 34–37 and 41 of the *LLP Rules* came into force on 1st April 2009. Further, Rules 32 and 33 and Rules 38–40 of the LLP Rules were notified to come into force on 31st May, 2009, *vide* Notification No. S.O. 1324(E), dated 22nd May, 2009.

The Government *vide* Notification No. G.S.R. 266(E) dated 30th March, 2010 had notified the Limited Liability Partnership (Winding up and Dissolution) Rules, 2010, which were subsequently superseded by Limited Liability Partnership (Winding up and Dissolution) Rules, 2012 *vide* Notification no. G.S.R.550 (E), dated 10th July, 2012. Accordingly, w.e.f. 10th July, 2012, the Limited Liability Partnership (Winding up and Dissolution) Rules, 2012 are in force.

Constitution of a Committee of Experts by the Government to examine the simplification of LLP Act and Rules

The Government *vide* Order dated 9th May, 2011 (F. No. 17/57/2011- CLV) constituted a Committee of a Group of Experts to examine the simplification of LLP Act, Rules and

approach/methodology for promoting Limited Liability Partnerships and matters related thereto.

Integration of E-Governance project for LLPs under the MCA21 platform

On 11th June, 2012, the Ministry of Corporate Affairs (MCA) achieved a new milestone by integrating e-Governance project for Limited Liability Partnership (LLP) under the platform of MCA21. Further, the LLP registry function was de-centralised and the different Registrars of Companies (ROCs) were empowered to register LLPs in their respective jurisdictions.

De-criminalisation of Compoundable Offences

With the object of removing the fear of criminal prosecutions for non-substantive minor and procedural omissions and commissions in the normal course of their business transactions, the Government decided to initiate the process of decriminalisation of compoundable offences under the LLP Act, for greater ease of doing business for law abiding LLPs. The objective of the de-criminalization exercise was to remove criminality of offences from business laws where no *mala fide* intentions are involved. In furtherance of the said objective, an exercise was undertaken to identify those provisions of the LLP Act, violations of which do not result in injury to public interest but are presently criminal in nature with fine as well as punishment after conviction being provided for in the Act.

The Government *vide* Notification dated 13th August, 2021 notified the Limited Liability Partnership (Amendment) Act, 2021 (No. 31 of 2021), which contains provisions relating to de-criminalization of certain offences, reduction of additional fee and introduction of new concepts for greater ease of doing business. Subsequently, *vide* Notification No. S.O. 621(E), dated 11th February, 2022, the Central Government has appointed 1st day of April, 2022, as the date on which the provisions of the Limited Liability Partnership (Amendment) Act, 2021 (No. 31 of 2021) shall come into force.

The LLP (Significant Beneficial Owners) Rules, 2023

In 2023, the Government brought out series of changes/amendments in the law relating to LLPs, most important being the LLP (Third Amendment) Rules, 2023¹ notified on 27th October 2023 whereby Rule 22B has been inserted in LLP Rules with regard to declaration in respect of beneficial interest in any contribution. Subsequently, the LLP (Significant Beneficial Owners) Rules, 2023 have been notified on 9th November, 2023.

Limited Liability Partnerships – In retrospect

World over, the LLP is one of the most preferred business structures for service sector and for small and medium enterprises. The concept of LLP exists in USA, UK, Canada,

1 *vide* Gazette Notification No. G.S.R. 803(E), dated 27th October, 2023

Japan, France, Australia, New Zealand, Singapore, Dubai, Kazakhstan, Kenya, Panama Republic, Pakistan, Mauritius, etc. A detailed comparison of the concept of LLPs in various overseas jurisdictions has been made in Chapter 18 of the book “Limited Liability Partnerships – Law and Practice”.

In India, the desirability of the LLP form has been expressed in the context of small enterprises from time to time by various Government committees/expert groups namely the Bhat Committee (1972), Naik Committee (1992), Expert Committee on Development of Small Sector Enterprises headed by Mr. Abid Hussain (1997) and Study Group on Development of Small Sector Enterprises (SSEs) headed by Dr S P Gupta (2001). Later, the Committee on Regulation of Private Companies and Partnerships headed by Mr. Naresh Chandra (2003) and the Committee on New Company Law headed by the Dr JJ Irani Committee (2005), both set up by the MCA, had strongly recommended for legislation on LLPs, which appears to be the genesis of enactment of the LLP Act, 2008.

The Ministry of Finance & Company Affairs, Department of Company Affairs had *vide* Order dated 21st August, 2002 (No. 12/25/2002-IGC) constituted a **Committee to examine the Auditor – Company relationship, regulating auditors, etc.**, under the chairmanship of Mr. Naresh Chandra (Naresh Chandra Committee-I). The Committee, in its report presented in July 2003 *inter alia* recommended that the Government should consider amending the Partnership Act to provide for partnerships with limited liability, especially for professions which do not allow their members to provide services as a corporate body.

Committee on Regulation of Private Companies and Partnerships headed by Mr. Naresh Chandra (2003) (Naresh Chandra Committee-II) strongly emphasised on the need for and importance of introducing the concept of LLP in India. In its Report, the Committee underscored the need of LLP saying that – *“in an increasingly litigious market environment, the prospect of being a member of a partnership firm with unlimited personal liability is, to say the least, risky and unattractive. Indeed, this is the chief reason why partnership firms of professionals, such as accountants, have not grown in size to successfully meet the challenge posed today by international competition. This makes an LLP a most suitable vehicle for partnerships among professionals such as lawyers and accountants.”*

In its report, the Committee further stated as under:

- *Two or more professionals, who wish to associate for the purpose of providing an identified professional service, may subscribe their names in an incorporation document in the prescribed form.*
- *The relations inter se the partners and between the partners and the LLP may be governed by individual agreements between the parties concerned. Such agreement must be filed with the RoC. Changes made in the agreement will also have to be filed with the RoC.*

- The LLP agreement should contain information as may be prescribed by the Department of Company Affairs.
- No limit is placed on the number of partners in an LLP. Any person may become a partner by entering into an agreement with the existing partners in the LLP. Further, when a person ceases to be a partner of an LLP, he/she should continue to be treated as a partner unless: (a) the partnership has notice that the former partner has ceased to be a partner of the LLP; or (b) a notice that the former partner has ceased to be a partner of the LLP has been delivered to the RoC. A partner having resigned from an LLP would continue to be liable for acts done by him during his tenure as member of the LLP.
- LLPs should be regulated and administered by the Central Government to ensure uniform standards, and since many of the State Governments might not have adequate infrastructure and expertise for ensuring effective regulation.
- Every partner of the LLP would be an agent of the LLP. However, an LLP would not be bound by anything done by a partner in dealing with a person if (a) the member in fact had no authority to act for the LLP by doing that act; and (b) the person knows that he has no authority or does not know or believe him to be a partner of the LLP.
- Where a partner of the LLP is liable to any person or entity as a result of his wrongful act or omission in the course of the business of the LLP, the LLP would be liable in such circumstances. However, the partner would be liable only to the extent of his/her contribution to the LLP.
- In the event of an act carried out by an LLP, or any of its partners, fraudulently, the liability would not be limited; it would, in fact, become unlimited as provided for in section 542 of the Companies Act, 1956.
- A partner shall not be liable for the personal acts or misconduct of any other partner.
- The provisions relating to insolvency, winding up and dissolution of companies as contained in the Companies Act, 1956 may be examined and suitably modified to conform to the philosophy of LLPs. The partners may have to contribute to the assets of the LLP in the manner provided for in this regard.
- There should be insurance cover and/or funds in specially designated, segregated accounts for the satisfaction of judgments and decrees against the LLP in respect of issues for which liability may be limited under law. The extent of insurance should be known to, and filed with the RoC, and be available for inspection to interested parties upon request.
- The standards of financial disclosures would be the same as, or similar to, that being prescribed for private companies subject to privilege already available between a professional and his or her client in maintaining confidentiality.
- The LLPs should be governed by a taxation regime that taxes the partners as individuals, rather than taxing the LLP itself, i.e., the LLPs should be treated in the same manner as the firm under the tax laws.

Expert Committee on Company Law (J. J. Irani Committee), in its report dated 31st May, 2005, made the following recommendations about LLPs:

- *In view of the potential for growth of the service sector, requirement of providing flexibility to small enterprises to participate in joint ventures and agreements that enable them to access technology and bring together business synergies and to face the increasing global competition enabled through WTO, etc., the formation of Limited Liability Partnerships (LLPs) should be encouraged.*
- *It would be a suitable vehicle for partnership among professionals who are already regulated such as Company Secretaries, Chartered Accountants, Cost Accountants, Lawyers, Architects, Engineers, Doctors, etc. However, it may also be considered for small enterprises not seeking access to capital markets through listing on the stock exchange.*
- *We recommend that a separate Act be brought about to facilitate limited liability partnerships. The concept need not be addressed in Companies Act.*

All through it was felt that the framework under the then Companies Act, 1956 was not suited to the less-onerous governance structure intended for LLPs. Moreover, the intent of the legislation to regulate widely held companies has been altogether different. The administration and enforcement of partnership firms under the Indian Partnership Act, 1932 is at the State level. Besides, a partnership firm involves full, joint and several liability of the partners. The traditional partnerships are considered unsuitable for multi-disciplinary combinations comprising large number of partners, seeking a flexible governance structure but with limited liability.

In the above backdrop, it was felt appropriate to bring a separate legislation for LLPs, and the Limited Liability Partnership Act, 2008 was promulgated.

Overview of the Limited Liability Partnership Act, 2008

The LLP Act contains provisions for the formation and regulation of LLPs and for matters connected therewith or incidental thereto. The LLP Act is segregated in the following Chapters and Schedules:

Chapter	Heading	Sections
Chapter 1	Preliminary	1 – 2
Chapter 2	Nature of LLP	3 – 10
Chapter 3	Incorporation of LLP and matters incidental thereto	11 – 21
Chapter 4	Partners and their relations	22 – 25
Chapter 5	Extent and limitation of Liability of LLP and Partners	26 – 31
Chapter 6	Contributions	32 – 33
Chapter 7	Financial Disclosures	34 – 41

Chapter 8	Assignment and Transfer of Partnership Rights	42
Chapter 9	Investigation	43 – 54
Chapter 10	Conversion into LLP	55 – 58
Chapter 11	Foreign LLP	59
Chapter 12	Compromise, Arrangement or reconstruction of LLPs	60 – 62
Chapter 13	Winding up and dissolution	63 – 65
Chapter 14	Miscellaneous	66 – 80
First Schedule	Provisions regarding matters relating to mutual rights and duties of partners and LLP	
Second Schedule	Conversion from firm into LLP	
Third Schedule	Conversion from private company into LLP	
Fourth Schedule	Conversion from unlisted public company into LLP	

Application of Other Laws not Barred

Section 71 of the LLP Act provides that the provisions of the LLP Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force. In other words, if the provisions of any other laws are applicable in a particular situation, those provisions shall continue to apply.

LLP Fact Sheet:

According to ‘Monthly Information Bulletin on Corporate Sector, June 2024 issued by the MCA, the most recent statistics of Limited Liability Partnerships (LLPs) are as follows:

- As on 30th June, 2024, a total number of 3,41,970 LLPs were active in the country. About 82% of active LLPs (2,80,788 in number) have an obligation of contribution less than or equal to Rs.5 lakh, and only about 4% (12,863 in number) of LLPs have obligation of contribution above Rs.1 crore.

Given below are the details of ‘Obligation of contribution-wise active LLPs’ as on 30th June, 2024:

Obligation of Contribution-wise active LLPs as on 30th June, 2024			
Sl. No.	Obligation of Contribution Range	Number	Obligation of Contribution (in Rs. Crore)
1	Up to 1 lakh	93,723	298.23
2	Above 1 lakh to 5 lakh	1,87,065	2,205.35

3	Above 5 lakh to 10 lakh	15,424	871.98
4	Above 10 lakh to 25 lakh	21,531	2,768.98
5	Above 25 lakh to 50 lakh	5,760	1,890.70
6	Above 50 lakh to 1 crore	5,604	3,463.07
7	Above 1 crore to 2 crore	5,386	6,347.85
8	Above 2 crore to 5 crore	3,544	10,268.19
9	Above 5 crore to 10 crore	1,780	11,125.39
10	Above 10 crore to 25 crore	1,319	18,350.95
11	Above 25 crore to 100 crore	631	27,403.55
12	Above 100 crore	203	1,50,311.97
Total		3,41,970	2,35,306.20

- Broader economic sector-wise classification of active LLPs as on 30th June, 2024 reveals that the Service sector continues to account for maximum registrations with 74% LLPs, followed by Industry and Agriculture sectors accounting for 24% and 1.85% respectively.¹
- Given below are the details of Economic activity-wise active LLPs as on 30th June, 2024:

Economic Activity-wise Active LLPs as on 30th June, 2024			
Sl. No.	Economic Activity	Number	Obligation of Contribution (in Rs. Crore)
I	Agriculture and Allied Activities	6,327	2,040.64
II	Industry	81,259	39,324.44
1.	Manufacturing	45,715	22,090.69
	1.1 Metals & Chemicals, and products thereof	13,120	8,988.86
	1.2 Machinery & Equipments	8,642	5,003.77
	1.3 Food stuffs	8,934	2,643.22
	1.4 Textiles	5,964	2,533.32
	1.5 Others	4,743	1,342.07
	1.6 Paper & Paper products, Publishing, printing and reproduction of recorded media	3,064	1,191.07
	1.7 Leather and products thereof	606	183.52
	1.8 Wood Products	642	204.87
2	Construction	30,708	13,411.40

¹ Source: Monthly Information Bulletin, June 2024, Ministry of Corporate Affairs, Government of India available at the following weblink – <https://www.mca.gov.in/content/mca/global/en/data-and-reports/reports/monthly-information-bulletin.html>

3	Mining & Quarrying	2,272	650.32
4	Electricity, Gas & Water Companies	2,564	3,172.03
III	Services	2,54,356	1,93,940.36
1	Business Services	89,305	51,161.29
2	Trading	57,631	16,208.88
3	Real Estate and Renting	35,531	22,334.95
4	Community, personal & Social Services	51,568	15,072.97
5	Transport, storage and Communications	14,502	2,853.98
6	Finance	5,273	85,323.83
7	Insurance	546	984.47
IV	Others	28	0.76
	Total	3,41,970	2,35,306.20

The above facts clearly indicate that the LLP is increasingly becoming a popular and preferred business structure across sectors.

Chapter - 2

Incorporation of LLP and matters incidental thereto

Incorporation of an LLP –Basic requirements

For an LLP to be incorporated, two or more persons, who have associated for carrying on a lawful business with a view to profit, shall subscribe their names to an incorporation document. [Section 11(1)(a)]

To incorporate an LLP, the business should be lawful. In other words, the proposed business of LLP should not be prohibited under any law for the time being in force. Further, LLP cannot be incorporated to carry on a not-for-profit activity (like section 8 companies under the Companies Act, 2013).

Incorporation Process Flow Chart of an LLP

Process of Incorporation of an LLP Under Web-based filing regime ¹
Step 1
Decide the Partners-to-be & the Designated Partners-to-be & Apply for DSC of Designated Partners
Step 2
Reservation of name Application for reservation of the name through the web service, Reserve Unique Name LLP (Form #RUN LLP) -Mention Objects of the LLP
Step 3
Application for incorporation of LLP through webform FiLLiP along with webform 9 which is an integrated service for incorporation of LLP

¹ W.e.f. 6th March, 2022, all the LLP e-filing services have been migrated to MCA V3 portal. However, all the other services will continue to exist at MCA V2 portal. For Frequently Asked Questions (FAQs) on MCA V3 portal, please visit: https://www.mca.gov.in/content/dam/mca/pdf/v3FAQs_20022022.pdf