

Limited Liability Partnerships

by

CA. PRAMOD JAIN

FCA, ACS, AICWA, ISA(ICAI)

LUNAWAT & CO.

Chartered Accountants

27th December 2008,
Tri Nagar KP CPE SC

Lunawat & Co.

Reasons for LLP Legislation

- To provide an effective alternate corporate business vehicle to professionals and enterprises keen to institutionalize their activities and graduate to the next level.
- To be a vehicle to contain a partnership of any size where partners may be at risk from the careless or accidental negligence of a colleague
- To make it a separate legal entity thereby making it more closely akin to a company than to a partnership (except insofar as the internal relations are governed by agreement between the partners)
- To provide benefits of limited liability but allow its members the flexibility of organising their internal structure as a partnership deed based on mutually arrived agreement.

International Experience

- **UNITED STATES**, - emerged in the early 1990s;
 - While only two states allowed LLPs in 1992, over forty had adopted LLP statutes by the time LLPs were added to the Uniform Partnership Act (UPA) in 1996.
 - Each individual state has its own law governing their formation.
 - Especially popular form of organization among professionals, particularly lawyers, accountants and architects.
- **UNITED KINGDOM**: - became law on 1/4/2001.
 - All partners have a form of limited liability, similar to that of the shareholders of a corporation.
 - However, the partners have the right to manage the business directly, and (in many areas) a different level of tax liability than in a corporation.
 - LLP is a "fiscal transparency". Only the members are liable to taxation.

LLP background in India

- The Abid Hussain Committee recommended legislation on LLP in 1997.
- LLP found mention in the report of Naresh Chandra Committee (2003) set up on regulation of private companies.
- The JJ Irani Expert Committee on Company Law (2005) recommended introduction of a LLP law.
- The Government introduced the Limited Liability Partnership Bill, 2006 in the Rajya Sabha on 15.12.2006.
- It was later referred to the Department Related Parliamentary Standing Committee on Finance
- The present Bill, 2008 has been approved by Rajya Sabha on 24.10.08 and Lok Sabha on 12.12.08.

Changes in Bill 2006 and 2008

- The LLP Bill 2008 has 14 chapters containing 81 clauses and 4 schedules. The earlier Bill had 14 chapters containing 73 clauses and 4 schedules.
- LLP Bill 2008 has introduced 4 new definitions- Advocate; Court; Entity and Schedule
- In clause 5 - LLP Bill 2008 has indicated the disqualifications of a partner
- Introduced clause 29 seeking to provide that any person who by words spoken or written or by conduct represents himself or knowingly permits himself to be represented to be a partner in the LLP is liable for any credit given to the LLP based on the misrepresentation. Also, if the business is continued after the partner's death under the same LLP name, it does not render the legal heirs to be liable for any events occurring after the partner's death.

Changes in Bill 2006 and 2008

- Introduced Clause 58. This clause seeks to provide the requirement and manner in which a firm, private company or unlisted public company shall be converted into LLP
- The earlier Bill 2006, vide clause 58 had provided that the Central government shall make rules for compromise, arrangement or reconstruction of LLP. LLP Bill 2008 has introduced clauses 60,61 and 62 regarding the same.
- LLP Bill 2008 has revised vide clause 69- If any document that is to be filed with the registrar is not filed on time, then it may be filed within three hundred days from the date on which it should have been filed on payment of an additional fee of Rs 100/- for every day of default in addition to the prescribed fees [earlier clause 65 had a default fee of Rs 500/- for every day]

Changes in Bill 2006 and 2008

- LLP Bill 2008 has introduced Clause 70- enhanced punishment i.e. if the LLP or any partner or designated partner commits an offence then the LLP or any partner or designated partner shall for the subsequent offence be punished with imprisonment or in cases where fine is provided, the fine payable shall be twice the amount of fine
- LLP Bill 2008 has introduced Clause 73 – Penalty on non- compliance of any order passed by the tribunal – imprisonment which may extend to 6 months and also a fine which shall be not less than fifty thousand rupees

Changes in Bill 2006 and 2008

- LLP Bill 2008 has introduced Clause 78- The Central government has the power to alter the schedules and the alterations made shall be laid before both houses of the parliament
- In clause 79 [earlier clause 72], the matters in respect of which Rules can be made by the Central government has been increased from 34 to 38
- LLP Bill 2008 has introduced Clause 81- until the Tribunal and Appellate tribunal are constituted under the provisions of the Companies Act, 1956, the provisions of the bill shall have effect subject to modifications.
- LLP Bill 2008 has also revised the four schedules

What is LLP?

Limited Liability Partnership is a

- A body corporate formed and incorporated under this Act
- Is a legal entity separate from its partners.
- It shall have perpetual succession.
- It is liable to the full extent of its assets;
- However its liability of the partners would be limited to their agreed contribution in the LLP.
- Further, no partner would be liable on account of the independent or unauthorized actions of other partners, thus allowing individual partners to be shielded from joint liability created by another partner's wrongful business decisions or misconduct.

LLP Act Framework

<i>Chapter No.</i>	<i>Heading</i>	<i>Sections</i>
I	Preliminary	1-2
II	Nature of LLP	3-10
III	Incorporation of LLP and matters incidental thereto	11-21
IV	Partners & their relations	22-25
V	Extent and Limitation of LLP and its Partners	26-31
VI	Contributions	32-33
VII	Financial Disclosures	34-41

LLP Act Framework

<i>Chapter No.</i>	<i>Heading</i>	<i>Sections</i>
VIII	Assignment and Transfer of Partnership Rights	42
IX	Investigation	43-54
X	Conversion to LLP	55-58
XI	Foreign LLPs	59
XII	Compromise, Arrangement or Reconstruction of LLP	60-62
XIII	Winding Up and Dissolution	63-65
XIV	Miscellaneous	66-81

LLP Rules Framework

<i>Chapter No.</i>	<i>Heading</i>	<i>Rules</i>
I	Preliminary	1-6
II	Nature of LLP	7-9
III	Designated PIN	10
IV	Incorporation of LLP and matters incidental thereto	11-20
V	Partners & their relations	21-22
VI	Form of Contributions	23
VII	Financial Disclosures	24-26
VIII	Destruction of old records	27

LLP Rules Framework

<i>Chapter No.</i>	<i>Heading</i>	<i>Rules</i>
IX	Investigation	28-31
X	Conversion to LLP	32-34
XI	Compromise, Arrangement or Reconstruction of LLP	35
XII	Electronic filing of Documents	36
XIII	Striking off name of Defunct LLP	37
XIV	Conversion of Firm to LLP	38
XV	Conversion of Pvt. Co. to LLP	39
XVI	Conversion of Pub. Co. to LLP	40

Incorporation of LLP

- Name to have 'Limited Liability Partnership' or 'LLP' as the last words of its name.
- Should not contain words indicating participation / patronage of CG or SG e.g., National, Union, Central, Federal, Republic, President, etc.
- Should not contain words like 'British India'
- Should not be vague like D.I.M.O. LLP, etc.
- Should not include name like Bank, CA, CS, Insurance, etc. without approval of its regulatory authority

Incorporation of LLP

- Name not to be identical or too nearly resembles any other
 - Partnership Firm,
 - LLP,
 - Body Corporate
 - a registered trade mark
 - any trade mark which is subject of an application for registration under Trade marks Act, 1999.
 - if resembles CG may direct to change the name – 3 months to change (Section 17) + (Rule 18)
- Reservation of name in Form 1 – for 3 months
- Form 2 and Form 3 to be filed along with fee.

Filing Fee – Annexure B

<i>Registration of LLP including conversion</i>	<i>Amount</i>
LLP whose contribution does not exceed Rs. 1 Lac	500
LLP whose contribution exceeds Rs. 1 Lac but does not exceed Rs. 5 Lacs	2000
LLP whose contribution exceeds Rs. 5 Lacs but does not exceed Rs. 10 Lacs	4000
LLP whose contribution exceeds Rs. 10 Lacs	5000
Increased slab of contribution and the fees paid on the preceding slab of contribution shall be paid through Form 4	

LLP Agreement

- LLP Agreement (S. 2(o)) means
 - Any written agreement
 - Between partners of LLP or LLP and its partners
 - Which determines the mutual rights & duties of the partners and their rights & duties in relation to that LLP.
- To be filed within 30 days of agreement in Form 4 – changes also to be filed (Rule 21)
- In absence of agreement as to any matter, First Schedule provisions would be applicable

LLP Agreement–First Schedule

<i>Regarding</i>	<i>Schedule I</i>
Capital	Equal
Profit & Loss sharing	Equal
Personal Liabilities	Each partner shall indemnify
Loss caused by fraud	Each partner shall indemnify
Working	Each partner shall take part
Remuneration	Nil
New partner	Consent of all partners required
Change in business	Consent of all partners required

LLP Agreement–First Schedule

<i>Regarding</i>	<i>Schedule I</i>
No. of Votes	One each
Any matter or issue	By majority vote
Similar business by any partner	That partner to pay all profits to LLP
Profit from use of LLP property or name	Profit to be given to LLP
Expulsion of partner	Majority cannot do so unless express agreement
Arbitration	Arbitration and Conciliation Act

Conversion into LLP

- Firm into LLP – Statement in Form 17 – Schedule – II + Rule 38
- Private Company into LLP – Statement in Form 17 – Schedule – III + Rule 39
- Unlisted Public Company into LLP – Statement in Form 18 – Schedule – IV + Rule 39
- Registrar to give certificate in Form 19 (Rule 32)

Partner in an LLP

- Any Individual
- Any Body Corporate
- However individuals cannot become partner if:
 - Has been found of unsound mind by court of competent jurisdiction
 - He is an undercharged insolvent
 - He has applied to be adjudicated as an insolvent and his application is pending

Body Corporate

Body Corporate (S. 2(d)) includes

- A Company u/s 3 of Companies Act
- A LLP under this Act
- A LLP incorporated outside India
- Companies incorporated outside India

But Exclude:

- A Corporate Sole
- A Co-operative Society
- Any other Body Corporate so notified.

No. of Partners

- Minimum 2
- Maximum – NA
- What happens if falls below 2 ?
 - If carries for more than 6 months and knowing so, then he would be personally liable for that period.
 - Tribunal can wind up

Partners

- Subscribers to incorporation documents to be partners
- Any other person as per LLP agreement may be a partner
- Relationship (rights & duties) to be governed by LLP agreement
- Partners to intimate change in his name or address within 15 days to LLP in Form 6
- Change in partner or name or address to be filed with Registrar within 30 days of change in Form 5.

Partners

- Partner himself may also file Form No. 5.
- Right to receive profit/loss and distribution are transferable wholly or in part as per LLP Agreement.
- 1/5th Partners may apply to CG for Investigation of affairs
- Partners can give loan or transact other business.

Designated Partners

- Further disqualifications (Rule 9(1)):
 - Is undischarged insolvent or adjudicated insolvent at any time in preceding 5 Years.
 - Suspended payment to Crs in preceding 5 yrs
 - Convicted by court of any offence involving moral turpitude or imprisoned for not less than 6 months.
- Minimum 2 designated partners out of which at least one should be resident in India.
- Resident – stayed in India not less than 182 days during immediately preceding one Year.

Designated Partners

- Designated partner – to obtain DPIN - application in Form 7 - to give prior consent in Form 9
- DIN to be treated as DPIN (Proviso to Rule 10(4)) – intimation to be given to CG in Form 25
- Intimation of DPIN to LLP in Form 26
- Responsible for doing all acts, matters, things, etc. required by LLP
- Liable for all penalties imposed on LLP
- To appoint DP within 30 days of vacancy
- If less than 2, each partner deemed to be DP

Cessation of Partners

- A person shall cease to be a partner when:
 - The LLP agreement provides so
 - If agreement does not provide, then by giving 30 days notice in Form 13
 - On his death
 - On dissolution of LLP
 - When he is declared to be of unsound mind by a competent court
 - When he has applied to be adjudicated as insolvent or is declared as insolvent
- A person dealing with former partner should know of his cessation or his resignation should be filed with registrar, otherwise he still would be regarded as partner. (Section 24(3)).

Contribution

- Contribution may consist of
 - Tangible
 - Moveable
 - Immovable
 - Intangible
 - Other benefit including:
 - Money
 - Promissory notes
 - Other agreements to contribute cash or property
 - Contracts for services performed or to be performed
- Contribution to be valued by practicing CA / CWA / approved valuer from panel maintained by CG

Extent of Liability

- Partner is agent of LLP but not of other Partners.
- LLP liability shall be met out of its property
- Partner is generally not liable for obligation of LLP
- Partner shall be personally liable for his own wrongful act or omission but not for other partners' acts.
- LLP is liable for wrongful act of partner in normal course of business.
- LLP not bound by anything done by a partner in dealing with a person if that partner has no authority to do the particular act and the person dealing knows that.
- Unlimited liability in case of fraud.

Accounts & Returns

- Method of Accounting:
 - Double entry system
 - Cash or accrual
- Records to be preserved
 - Permanent – Annexure C
 - 21 years – LLP liquidation a/c
 - 5 years – Rule 27(2)(b) & Annexure D
 - 8 years – others and accounts
 - 3 years – Foreign LLP after ceasing
- Statement of Accounts and Solvency to be filed within 30 days of end of 6 months from end of financial year in Form 8 (Rule 24(5))
- Annual Return to be filed within 60 days from end of financial year in Form 11 (to be verified by CS (Rule 25(2)))

Audit

- Audit compulsory. However exempt (Rule 24(10)) if
 - Turnover does not exceed Rs. 40 Lacs; or
 - Contribution does not exceed Rs. 25 Lacs
- Auditor to be appointed by DP within 30 days before end of FY (except 1st year)
- Casual vacancy may be filled.
- Partners may appoint if DP fails
- Only practicing CA to be auditor
- Retiring auditor deemed to be reappointed if appointment not made unless otherwise provided in LLPA

Taxation

- Taxation aspect remains an area of uncertainty, - LLP will be treated as a firm as defined under the Income Tax Act 1961 for the purpose of taxation. There can be two implications:
 - That on the same basis as an ordinary partnership firm, the LLP will pay tax on its profits after deduction of business expenditure, salaries and interest paid to the partners. Partners will be liable to pay tax on salary and interest receipts, whereas the share in profits is exempt;
 - Another way that only the profits in the hands of the LLP partners will be taxed. A L.L.P. will have Pass through Status (proposed by the Naresh Chandra Committee), the partners will be liable to pay tax on share of LLP's profits received in their hands. This is also known as tax transparency.
- The Bill has vide its First Schedule (CLAUSE No. 6) prohibited partners of LLPs from accepting any remuneration. This implies that they may be subject to Income Tax in respect of their share of profits received by them.

Taxation

- If no remuneration is to be paid, its allowance in the hands of LLP and taxation in the hands of the partners shall not arise.
- Since the LLP is visualized of as a company as it is under the Companies Act, it would be just and logical to tax an LLP like a company and ignore the existence of partners for tax purposes like shareholders.
- If the partners receive any income like interest from the LLP, the income so received would be taxable in the hands of the partners.

Taxation

- Even in under **UK law**, the LLP is a fiscal transparency. Only the members are liable to taxation.
- Similarly, in **USA** as in a partnership or limited liability company (LLC), the profits of an LLP are distributed among the partners for tax Purposes, avoiding the problem of "double taxation" often found in corporations.
- Shall have to wait for amendments in Income Tax Act.

Winding up & Dissolution

- Voluntary – by $\frac{3}{4}$ members
- Wound up by Tribunal:
 - If LLP decides that it be dissolved by Tribunal
 - If no. of partners are below 2 for more than 6 months
 - If LLP is unable to pay its debts
 - If LLP has acted against interests of the sovereignty & integrity of India, security of state or public order
 - If LLP fails to file statement of accounts and solvency or annual return for 5 consecutive yrs.
 - Tribunal is of opinion that it is just and equitable
- Strike off defunct LLPs (Section 75) + (Rule 37)

LLP Agreement Clauses

- Name & address of initial partners
- Business to be done - restrictions
- Place of business & registered office
- Conditions /qualifications for admission, resignation and expulsion of partners
- Contribution and conditions of its introduction & withdrawals
- Remuneration
- Profit & Loss Ratio

LLP Agreement Clauses

- Personal liabilities and fraud
- Profit from use of property/name of LLP
- Vote weightage
- Resolution passing vote requirement – matters thereto
- Similar business by Partners situations
- Arbitration
- Interest on contribution/loan
- Mode/method of distribution of profits

LLP Agreement Clauses

- Rights over assets (tangible/intangible)
- Assignment & transfer of partnership rights
- Appointment & reappointment of auditors
- Financial year – ending 31st March
- Banking
- Method of accounting
- Who would be designated partners
- Dissolution situations

LLP Forms – Annexure A

<i>F. No.</i>	<i>Related to</i>	<i>R. Sec</i>
1	Application for reservation or change of name	16(1)
2	Form of Incorporation Document	11(2)
3	Application & Declaration of Incorporation of LLP	11(1)
4	Form for filing LLPA and changes, if any therein	23(2)
5	Notice of appointment of partners and the changes among them or consent of incoming partner to become a partner / D Partner	25(2) 25(3) 7(4)
6	Intimation of particulars / change in particulars to the LLP by the Partner	25(1)
7	Application for allotment of D PIN	7(6)

LLP Forms – Annexure A

<i>F. No.</i>	<i>Related to</i>	<i>R. Sec</i>
8	Form for filing Statement of Account & Solvency	34(2)
9	Consent to act as Designated Partner	7(3)
10	Consent to act as DP- Intimation of changes in particulars of DP to be given to the CG	7(3)
11	Annual Return of a Limited Liability Partnership	35(1)
12	Form for intimating other address for service of documents	13(2)
13	Notice by Partner to resign as a Partner to the other Partners.	24(1)
14	Intimating the Registrar of Firms/ROC for conversion of firm/company into LLP.	58(1)

LLP Forms – Annexure A

<i>F. No.</i>	<i>Related to</i>	<i>R. Sec</i>
15	Notice of change of place of registered office	13(3)
16	Certificate of Incorporation	12
17	Application by a firm for its conversion into LLP	58(1)
18	Application by a private company/unlisted public company for its conversion into LLP	58(1)
19	Certificate of Incorporation on conversion	58(1)
20	Summons for directions to convene meeting	60(1)
21	Affidavit in support of Summons	60(1)
22	Notice of intimation of Order of Court/ Tribunal to the Registrar	R 35(11)

LLP Forms – Annexure A

<i>F. No.</i>	<i>Related to</i>	<i>R. Sec</i>
23	Application for direction to change the Name	18
24	Application to the Registrar or CG	
25	Notice of intimation of DIN for the purpose of DPIN	R. 10(4)
26	Intimation of allotment of DPIN to the Limited Liability Partnership by the Designated Partner	R 10(9)
27	Application for reservation/renewal of reservation of name	R 18
28	Notice of change of name	19(1)
29	Form of Proxy	R 35

Filing Fee – Annexure B

<i>For filing, registering or recording any document, form, Statement of Accounts and Solvency, annual returns, etc.</i>	<i>Amount</i>
LLP whose contribution does not exceed Rs. 1 Lac	50
LLP whose contribution exceeds Rs. 1 Lac but does not exceed Rs. 5 Lacs	100
LLP whose contribution exceeds Rs. 5 Lacs but does not exceed Rs. 10 Lacs	150
LLP whose contribution exceeds Rs. 10 Lacs	200

Filing Fee – Annexure B

<i>Other Fees</i>	<i>Amt</i>
Application for reservation of name u/s 16	200
Application for direction to change name u/s 18	10000
Application for striking off the name from Reg.	500
Application for reservation of name by Foreign LLP u R 18(4)	10000
Application for renewal of name under rule 18(4)	5000
Fees for inspection of documents kept by Registrar	50
Obtaining certified copy of COI or COR of conversion of LLP	50
Obtaining certified copy of any other document	5 pp
Any other application	500

General

- Invoices, Letterheads, etc to contain name, address, registration no. & a statement that it is registered with Limited Liability [Section 21(1)]
- CG may by notification make any provisions of Company Law applicable to LLP
- Foreign LLP, firm or Company can reserve the name for 3 years R. 18(4)
- Electronic filing of documents
- Late fee upto 300 days – Rs. 100/- per day
- Not applicable to NGOs
- Merger, reconstruction, amalgamation permissible

Major Penalties

<i>Section</i>	<i>Contravening s.</i>	<i>Nature of default</i>	<i>Mini Amt</i>	<i>Max Amt</i>
10(1)	7(1)	Not having 2DP of which 1 is resident	10K	5 L
10(2)	7(4); 7(5); 8;9	Non filing of consent of DP Liabilities and changes in DP	10 K	1 L
13(4)	13	Non-intimation of Registered office of LLP and its change	2 K	25 K
17(2)	17(1)	Not complying with CG direction to change name	LLP-10K DP- 10k	LLP-5L DP -1L
20	20	Improper use of 'LLP'	50K	5L
21(2)	21(1)	Non mention on invoices, etc	2 K	25 K
25(4) 25(5)	25(1) 25(2)	Non-intimation of change in partners	2 K	25 K

27th December 2008,
Tri Nagar KP CPE SC

Lunawat & Co.

Major Penalties

<i>Section</i>	<i>Contravening s.</i>	<i>Nature of default</i>	<i>Mini Amt</i>	<i>Max Amt</i>
34(5)	34	Non maintenance of books of accounts, records and audit	LLP-25K DP- 10k	LLP-5L DP -1L
35	35	Non- filing of Annual Return	LLP-25K DP- 10k	LLP-5L DP -1L
37	37	False Return, documents or statements filed	1 L Imp.	5 L Imp 2 y
70		Enhanced Penalty – second offence	Imp if provd	2 times
73		Failure to comply with Tribunal Orders	Imp. 50K	6 mnths
74		General Penalties – not specifically provided	5K	5 L Cont- 50 p.d.

27th December 2008,
Tri Nagar KP CPE SC

Lunawat & Co.

Partnership vs. LLP

	<i>Partnership</i>	<i>LLP</i>
Legal Entity	Not Separate	Separate
Perpetual succession	No	Yes
No. of members	Min. 2 Max. 20	Min2 Max NA
Instrument Requirements	Deed on Stamp paper, even if change in Const.	LLPA to be reg. at ROC, Fees for filing all doc.
Governing law	Indian Partnership Act	LLP Act & Companies Act

Partnership vs. LLP

	<i>Partnership</i>	<i>LLP</i>
Capital Requirement	Nil, However Stamp paper as per capital	Contribution as per LLPA
Partner's Identity	No legal requirement	DP to obtain DPIN
Liability	Unlimited	Limited to contribution
Names	No regulation	Regulated
Audit	Only if turnover exceeds 40L – 44AB	Only if turnover exceeds 40L or contribution 25 L

Partnership vs. LLP

	<i>Partnership</i>	<i>LLP</i>
Financials	Secret	Statement of accounts to be filed
Penalties	Nil	As per LLP Act
Capital withdrawal	Flexible	As per LLPA
Loans – 269SS/T	Partner's capital – cash /trf allowed	Apart from contribution, loans may be covered
Most preferred by	Small businesses and professionals	Professionals

Company vs. LLP

	<i>Company</i>	<i>LLP</i>
Legal Entity	Separate	Separate
Perpetual succession	Yes	Yes
No. of members	Pvt-Min2 Max 50 Pub-Min3 Max NA	Min2 Max NA
Instrument Requirements	MA to be reg. at ROC, Fees for filing all doc.	LLPA to be reg. at ROC, Fees for filing all doc. – Filing fee Less than company.

Company vs. LLP

	<i>Company</i>	<i>LLP</i>
Capital Requirement	1 Lac for Pvt. & 5 Lacs for Public Ltd. Cos.	Contribution as per LLPA
Directors Identity	All directors to obtain DIN	Only DP to obtain DPIN
Names	Regulation	Regulated - other partnership names cannot be kept
Flexibility of business	Regulated by MA & AA	Regulated by LLPA

Company vs. LLP

	<i>Company</i>	<i>LLP</i>
Most preferred by	Large businesses	professionals
Listing	Possible	Not possible
Audit	Compulsory	Only if turnover exceeds 40L or contribution 25 L
Shareholders	No consent required	Partners consent required
Meetings	Regulated by Companies Act	Not mandatory

**THE DREAM IS NOT WHAT YOU
SEE IN SLEEP.....**

**DREAM IS WHICH DOES NOT LET
YOU SLEEP.**

DR. ABDUL KALAM
(Former President of the Republic of India)

27th December 2008,
Tri Nagar KP CPE SC

Lunawat & Co.

Thank You

CA. Pramod Jain
LUNAWAT & CO.

pramodjain@lunawat.com

9811073867

27th December 2008,
Tri Nagar KP CPE SC

Lunawat & Co.