

LLP (Amendment) Act, 2021



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Introduction

- Government issued press release on 3rd February 2021 and shared some details about amendment in LLP Act, 2008.
- LLP Amendment Bill, 2021 passed on 28th July 2021 by both house of Parliament.
- 29 amendments were made to LLP Act 2008 by LLP Amendment Bill 2021.
- President of the India approved the bill on 13th August 2021 and become LLP Amendment Act, 2021
- 12th February 2022 MCA by notification declared that the provisions of LLP Amendment Act, 2021 will be applicable from 1st April 2022.

PURPOSE OF AMENDMENT IN VERSION:



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- The government looks to improve ease of doing business and encourage start-ups.
 - To encourage business class to incorporate LLP's.
 - To make it popular for Start-ups
 - Conversion of Partnership firms into LLP's
 - To remove the fear of criminal prosecutions for non- substantive minor and procedural omissions and commissions in the normal course of their business transactions.
 - The objective of the De-criminalization exercise is to remove criminality of offences from business laws where no malafide intentions are involved

ADDITION / SUBSTITUTION/OMISSION:

- Five (5) Sections have been **INSERTED** in LLP Act, 2008 through LLP (Amendment) Act, 2021.
- Nineteen (19) Sections Of LLP Act, 2008 have been **SUBSTITUTED**.
- Four (4) section of LLP Act, 2008 totally **OMITTED**.
- **After above amendment, LLP Act having $(81+5-4) = 82$ Section**



KEY AMENDMENTS

Applicability Of Companies Act, 2013

Sections on LLP Act, 2008

S. No.	Section No.	Particulars
1	90	Register of significant beneficial owners in a company
2	164 (1) & (2)	Disqualifications for Appointment of Director
3	165 (1), (3),(4),(5) &(6)	Number of Directorship
4	167 (1), (2) & (3)	Vacation of Office of Director
5	206(5)	Power to Call for Information, Inspect Books and Conduct Inquiries.
6	207 (3)	Conduct of inspection and inquiry.
7	252 (1) (2) & (3)	Appeal to Tribunal
8	439 (1) (2) (3) & (4)	Offences to be non-cognizable.



1. SMALL LLP (Section 2(1)(ta)) (Inserted)

“Small Limited Liability Partnership” means a limited liability partnership—

- i. the **contribution** of which, does not exceed **twenty-five lakh rupees (Rs. 25,00,000/-)** or such higher amount, **not exceeding five crore rupees**, as may be prescribed; and
- ii. the **turnover** of which, as per the Statement of Accounts and Solvency for the immediately preceding financial year, does not exceed **forty lakh rupees (Rs. 40,00,000/-)** or such higher amount, **not exceeding fifty crore rupees**, as may be prescribed; or
- iii. which meets such other requirements as may be prescribed, and fulfils such terms and conditions as may be prescribed;’;



2. RESIDENT OF INDIA for the purpose of Designated Partner **(Section 7(1) Explanation) (Substituted)**

Stay in India \geq 120 days during a financial year.

Effect:

Now a person who is resident in India for just 120 days in financial year can be appointed as designated partner.

3. Non availability Of Name: **Section 15(2)(b) (Substituted) –**

No Limited Liability Partnership shall be registered by a name which, in the opinion of the

- (i) Central Government is identical or
- (ii) too nearly resembles to that of any other limited liability partnership or a company or a registered trademark of any other person under the Trademarks Act, 1999



Change of name of Limited Liability Partnership

Section 17 (Fully Substituted and Section 18 Omitted)

(1) If name similar to another LLP

OR

Registered trademark proprietor

CG may direct to change its name within 3 months from the issue of such direction.

(2) Application of proprietor – maintainable within a period of 3 years – starting from the date of incorporation or change of name of LLP.

(3) Send Notice of such change along with order of CG to Registrar within 15 days from the date of such change



(4) Record such change in LLP Agreement within 30 days of such change in Certificate of Incorporation.

(5) In case of default in complying with the direction of CG – CG shall allot a new name to the LLP as may be prescribed + Fresh Certificate Of Incorporation shall be issued by Registrar.



Definition of Business (Section 2(1)(e)) (Inserted)

“business includes

- every trade,
- profession,
- service and
- occupation
- except any activity which the Central Government may, by notification, exclude” as may be prescribed.



Accounting and auditing standards

Section 34A (Inserted)

CG in consultation with NFRA constituted under section 132 of Companies Act, 2013 and on recommendations of ICAI constituted under section 3 of the Chartered Accountants Act, 1949, for a class or classes of limited liability partnerships –

- i. Prescribe Accounting Standards
- ii. Prescribe Auditing Standards



Compounding of offences

Section 39 (Fully Substituted)

- (i) Compounding of Offence which shall be punishable with **fine only** shall be done by Regional Director or officer not below the rank of **Regional Director**
- (ii) Compounded amount **shall not be less than the minimum fine** prescribed in the Act.
- (iii) No further compounding if the same offence committed **within 3 years** of first compounding.



- (iv) Application for compounding shall be made to Registrar who shall forward the same to Regional Director or any other officer not below the rank of Regional Director.
- (v) Notice to Registrar within 7 days of compounding of offence.
- (vi) Compounding done before institution of prosecution; no prosecution shall be initiated.
- (vii) Compounding done after initiation of prosecution proceedings, Registrar shall inform the Court about compounding and the offender will be discharged and compounding shall be done.



Establishment of Special Court

Section 67A (Inserted)

- (1) To provide **speedy trials** under this Act, CG may by notification, establish or designate as many Special Courts.
- (2) Special courts established under section 435 of Companies Act, 2013 shall be deemed to be Special Courts for the purpose of trial of offences punishable under this Act.



Procedure and powers of Special Court

Section 67B (Inserted)

- (1) **Jurisdiction of Special Court** – Area in which the Registered Office of the LLP is situated in relation to which the offence is committed.
- (2) If more than one special courts for such area – High Court concerned shall specify on its behalf.
- (3) Special Court may, if it thinks fit, try in a summary way any offence under this Act which is punishable with imprisonment for a term not exceeding three years, provided that in the case of any conviction in a summary trial, no sentence of imprisonment for a term exceeding one year shall be passed



Appeal and Revision

Section 67C (Inserted)

The High Court may exercise, so far as may be applicable, all the powers conferred by Chapters XXIX and XXX of the Code of Criminal Procedure, 1973.

Registration offices

Section 68A (Inserted)

The Central Government shall, by notification, establish such number of registration offices at such places as it thinks fit, specifying their jurisdiction.



Payment of additional fee Section 69 (Fully Substituted)

A different fee or additional fee may be prescribed for **different classes** of limited liability partnerships or for **different documents** or **returns** required to be filed under this Act or rules made thereunder.



General Penalties

Section 74 (Fully Substituted)

If a limited liability partnership or any partner or any designated partner or any other person contravenes –

- (i) any of the provisions of this Act, or
- (ii) the rules made thereunder, or
- (iii) any condition, limitation or restriction subject to which any approval, sanction, consent, confirmation, recognition, direction or exemption in relation to any matter has been accorded, given or granted,

AND



For which **no penalty or punishment is provided elsewhere in this Act**, the limited liability partnership or any partner or any designated partner or any other person, who is in the default, shall be liable to **penalty of Rs. 5000.**

In case of continuing default, **a further penalty of one hundred rupees for each day** after the first during which such contravention continues, **subject to a maximum of one lakh rupees.**



Fees and Additional Fees Applicable to LLP

(A) Fees for conversion of Firm or Company to LLP

S.No.	Particulars	Amount (in Rs.)
1	LLP whose contribution up to Rs. 1 lakh	500
2	LLP whose contribution Rs.1 lakh-5lakh	2,000
3	LLP whose contribution Rs.5 lakh-10lakh	4,000
4	LLP whose contribution Rs.10 lakh-25lakh	5,000
5	LLP whose contribution Rs.25 lakh-1 crore	10,000
6	LLP whose contribution exceeds 1 crore	25,000



(B) For Filing, registering, recording any document, form, statement, Statement of Account & solvency, annual return and application for Conversion of Firm or Company to LLP

S.No.	Particulars	Amount (in Rs.)
1	LLP whose contribution up to Rs. 1 lakh	50
2	LLP whose contribution Rs.1 lakh-5lakh	100
3	LLP whose contribution Rs.5 lakh-10lakh	150
4	LLP whose contribution Rs.10 lakh-25lakh	200
5	LLP whose contribution Rs.25 lakh-1 crore	400
6	LLP whose contribution exceeds 1 crore	600



(C) For Filing, registering or recording notice of aptt, cessation, change in name, address, designation of partner or designated partner, intimation of DPIN & Consent to become partner/designated partner in Form 4

S.No.	Particulars	Amount (in Rs.)
1	For Small LLP	50
2	For other than Small LLP	150



(D) Table of Additional fees for delay in filing of form

S.No.	Period of Delays	Small LLPs	Other than Small LLPs
1	Up to 15 days	One time	One time
2	15 days -30 days	2 time	4 time
3	30 days-60days	4time	8 time
4	60 days-90days	6time	12time
5	90 days-180days	10time	20time
6	180 days-360days	15time	30 time
7	Beyond 360 days	Other than Form 8 &11: 25 time For Form 8 & 11: 15times plus Rs. 10 per day beyond 360 days	Other than Form 8 &11: 50 time For Form 8 & 11: 30times plus Rs. 20 per day beyond 360 days

Adjudication of penalties

Section 76A (Inserted)



The Central Government may, by an order published in the Official Gazette, appoint as many officers of the Central Government, not below the rank of Registrar, as adjudicating officers.

The Central Government shall, while appointing adjudicating officers, specify their jurisdiction in the order.

The adjudicating officer may, by an order –

- (a) impose the penalty** on the limited liability partnership or its partners or designated partners or any other person, as the case may be.
- (a) In case the default relates to non-compliance of Section 34(3) or Section 35(1) and such default has been rectified within 30 days of issue of the notice by the adjudicating officer, no penalty shall be imposed in this regard and proceedings under this section shall deemed to be concluded.



Appeal to RD:

Any person aggrieved by an order made by the adjudicating officer under sub-section (3) may prefer an **appeal to the Regional Director** having jurisdiction in the matter.

Every appeal made to Regional Director shall be filed within a period of sixty days from the date on which the copy of the order made by the adjudicating officer is received by the aggrieved person.

Fine on Non Compliance of Order:

Where a limited liability partnership fails to comply with the order of Adjudicating Authority or Regional director shall be **punishable with fine which shall not be less than twenty-five thousand rupees, but may extend to five lakh rupees.**



Jurisdiction of Tribunal and Appellate Tribunal Section 72(2) (Fully Substituted)

- (1) Any person aggrieved by an order of Tribunal may prefer an appeal to the Appellate Tribunal.
- (2) No appeal shall lie to the Appellate Tribunal from an order made by the Tribunal with the consent of parties.
- (3) Appeal to Appellate Tribunal shall be made within 60 days from the date on which the copy of the order of the Tribunal is made available to the person aggrieved in such form accompanied by such fees as may be prescribed.
- (4) Extension of 60 days may be provided if sufficient cause is provided by the appellant and Appellate Tribunal is satisfied with the same.

Section 73 - Penalty on non-compliance of any order passed by Tribunal (OMITTED)



Jurisdiction of Courts Section 77 (Fully Substituted)

The Special Court referred to in clause (a) of sub-section (2) of section 67A shall have jurisdiction and power to impose punishment under section 30 of the Act.

Section 30 (Unlimited liability in case of fraud)

The criminal cases against the limited liability partnership or its partners or designated partners or any other person in default filed under this Act and pending before the court of Judicial Magistrate of the first class or Metropolitan Magistrate, as the case may be, shall be transferred to the Special Court



Cognizance of offences

Section 77A (Inserted)

No court, other than the Special Courts referred to in section 67A, shall take cognizance of any offence punishable under this Act or the rules made thereunder save on a complaint in writing made by the Registrar or by any officer not below the rank of Registrar duly authorized by the Central Government for this purpose.



Power to make rules

Section 79 (Additions + Substitutions)

- (i) for clause (a), the following clauses shall be substituted, namely:— “
the contribution of such higher amount under sub-clauses (i) and (ii) of clause (ta) of section 2;
- (aa) the terms and conditions to be fulfilled by class or classes of limited liability partnerships under long line to clause (ta) of section 2;
- (ab) the form and manner of prior consent to be given by designated partner under sub-section (3) of section 7



Power to remove difficulties

Section 80(1A) (Inserted)

Notwithstanding anything contained in sub-section (1), if any difficulty arises in giving effect to the provisions of this Act as amended by the Limited Liability Partnership (Amendment) Act, 2021, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act, as may appear to it to be necessary for removing the difficulty:

No such order shall be made under this section after the expiry of a period of three years from the date of commencement of the Limited Liability Partnership (Amendment) Act, 2021.”.

Section 81 - Transitional provisions (OMITTED)



AMENDED PENALTIES UNDER VARIOUS SECTIONS OF THE ACT

Section 10: **Punishment for contravention of sections 7, 8 and 9**

Penalty clauses amended in Section 10

Section 13: **Registered office of limited liability partnership and change therein**

Penalty clauses amended in Section 13

Section 21: **Publication of name and limited liability**

Penalty clauses amended in Section 21

Section 25: **Registration of changes in partners**

Penalty clauses amended in Section 25



Section 30: Unlimited liability in case of fraud

Penalty clauses amended in Section 30

Section 34: Maintenance of books of account, other records and audit, etc

Penalty clauses amended in Section 34

Section 35: Annual Return

Penalty clauses amended in Section 35

Section 60: Compromise, or arrangement of limited liability partnerships

Penalty clauses amended in Section 60

Section 62: Provisions for facilitating reconstruction or amalgamation of limited liability partnerships

Penalty clauses amended in Section 62

Section 74: General penalties

Penalty clauses amended in Section 72