



FAQs on Limited Liability Partnership



**THE INSTITUTE OF
Company Secretaries of India**

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament

FAQs ON LIMITED LIABILITY PARTNERSHIPS



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Preface

Great wealth and limited liability are circumstances that are rarely seen together.

~ Napoleon Hill

The evolution in the legal structure of a classic partnership firm brought about the greatest single invention of modern times as regards the formats of conducting business are concerned. Not only did the Achilles heel turn around with the inception of the concept of "limited liability partnership" (LLP) but the shortcomings of a partnership firm faded away with the dawn of this hybrid form of business organization which proudly combined the benefits of both partnership firms and companies having features of the likes of separate legal entity, perpetual succession, stability in existence with zero impact of change in partners, so on and so forth.

LLPs proved to be a unique mode of doing business appealing especially to those run by professionals of different specialisations such as accountants, company secretaries, lawyers, etc. resorting to Joint Ventures, Venture Capitals, Small and medium enterprises formats to fulfil their business aspirations. People from different walks of life who had been wanting to tie-up for commercial purposes found this as a perfect way out, one which was needed for quite a long time, one which had the flexibility of a partnership, the flexibility of organizing internal management on the basis of a mutually arrived agreement amongst the partners along with the advantages of limited liability of a company including but not limited to limited liability, all at a low compliance cost.

Brought into existence by a dedicated legislation, i.e., the Limited Liability Partnership Act, 2008, LLPs, even after almost a decade find themselves struggling with a variety of issues. The professionals, too, at times face lack of clarity as far as the existing legal structure for this form of business enterprises is concerned. The Institute of Company Secretaries of India, being a pioneer in corporate governance aiming at effective compliance of the legislations in place, has on various occasions made efforts to provide its members and the public at large with interpretations of law befitting all the stakeholders. The rolling out of '**FAQs on Limited Liability Partnerships**' is one such initiative intended at providing an ease of understanding to both the professionals and other stakeholders as far as the existing legal structure of a limited liability partnership is concerned.

The publication covers topics related to law and procedures regarding formation and registration, management, compliance requirements, compromise, arrangement or reconstruction, strike off, winding-up and dissolution of limited liability partnerships.

I commend the dedicated efforts of CS Deepa Khatri, Deputy Director, in writing the manuscript of this publication with the able guidance of CS Samir Raheja, Director and CS Banu Dandona, Joint Director in the Directorate of Corporate Law and Governance, ICSI. I place on record my sincere thanks to CS Vijay Sharma, CS Shamalee Vaze, Company Secretary in Practice and CS Makarand Lele, Vice President & Central Council Member for their valuable inputs while reviewing the draft of this publication.

I am confident that this publication will be of practical value not only to the members, practitioners and students but other stakeholders as well. However, considering the fact that there is always scope for improvement, I would personally be grateful to readers and users for their suggestions/comments for bringing about further refinement in this publication.

New Delhi
16th November, 2017

CS (Dr.) Shyam Agrawal
President
The Institute of Company Secretaries of India

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LIMITED LIABILITY PARTNETSHIP- A BUSINESS VEHICLE

1. What is a Limited Liability Partnership?

As per clause (n) of section 2(1) of the Limited Liability Partnership Act, 2008, (hereinafter referred to as the "**Act**"), a "**limited liability partnership**" means a partnership formed and registered under this Act.

As per section 3 of the Act, a Limited Liability Partnership has the following characteristics:

- A limited liability partnership is a body corporate formed and incorporated under this Act and is a legal entity separate from that of its partners.
- A limited liability partnership shall have perpetual succession.
- Any change in the partners of a limited liability partnership shall not affect the existence, rights or liabilities of the limited liability partnership.

A limited liability partnership is popularly known as an "**LLP**", and has become an alternative business vehicle to carry out business as it combines the characteristics of a private company and a conventional partnership.

Over the period of time a LLP has gained popularity due to the following:

- LLP provides limited liability status to its partners and offers the flexibility of internal arrangement through an agreement between the partners.
- This combination gives entrepreneurs and businessmen a more structured business vehicle compared to a sole proprietorship or a conventional partnership.
- It provides the flexibility of controlling the business operation in accordance with the partnership agreement whilst enjoying the limited liability status compared to a company which is subject to strict compliance requirements under the Companies Act 1965 in most of its affairs.
- LLP is a business vehicle which offers simple and flexible procedures in terms of its formation, maintenance and termination while simultaneously has the necessary dynamics and appeal to be able to compete domestically and internationally.

The LLP was also introduced in countries such as the United States of America,

United Kingdom, Singapore, Malaysia and Japan as a form of alternative business vehicle. In India there are approximately 96020 LLPs are registered as on 3rd June, 2017.

2. A limited liability partnership firm is governed under which law?

The formation and regulation of limited liability partnerships is governed by Limited Liability Partnership Act, 2008 and the rules made thereunder i.e. Limited Liability Partnership Rules, 2009, (hereinafter referred to as the **“Rules”**).

3. When did the provisions of Limited Liability Partnership Act, 2008, come into force?

As per Section 1 of the Limited Liability Partnership Act, 2008, the Act extends to the whole of India. Further, it shall come into force on such date as the Central Government may, by notification in the Official Gazette may appoint.

As per the Notification No. SO 891(E), dated 31-3-2009, as amended by GSR 549(E), dated 10-7-2012, in exercise of the powers conferred by sub-section (3) of section 1 of the Limited Liability Partnership Act, 2008, The Central Government appoints the **31st day of March, 2009** as the date on which the following sections of the said Act shall come into force, namely : –

Sl. No.	Sections
1.	Section 1
2.	Section 2 except clauses (c) and (u) of its sub-section (1)
3.	Sections 3 to 30
4.	Section 31 except to the extent of its application in context of the ‘Tribunal’
5.	Sections 32 to 50
5A.	Section 51
6.	Sections 52 to 54
7.	Sections 59 to 62
7A.	Sections 63, 64 and 65
8.	Sections 66 to 71
9.	Sections 74 to 80
10.	Section 81 except clause (b) to the extent of its application to sections 51, 63 and 64 and clause (c)
11.	First Schedule

As per the Notification No. SO 1323(E), dated 22-5-2009, in exercise of the powers conferred by sub-section (3) of section 1 of the Act, the Central Government appoints the **31st day of May, 2009** as the date on which the provisions of sections 55 to 58, Second Schedule, Third Schedule and Fourth Schedule of the said Act shall come into force.

4. Whether provisions of the Indian Partnership Act, 1932 would be applicable to LLPs?

As per Section 4 of the Act, save as otherwise provided, the provisions of the Indian Partnership Act 1932 shall not apply to a limited liability partnership.

5. What are the benefits of a limited liability partnership?

A limited liability partnership has the following benefits:

- The nature of a limited liability partnership firm is that of a body corporate.
- It has a legal entity separate from its partners.
- It has perpetual succession.
- Any change in the partners of a limited liability partnership shall not affect the existence, rights or liabilities of the limited liability partnership.

Thus, forming a limited liability partnership firm is more favourable.

6. What is the basic difference between a Limited Liability Partnership and a General Partnership?

A Limited Liability Partnership is a legal entity separate from its partners and therefore, offers limited liability to its partners whereby any debts and obligations of the LLP will be borne by the assets of the LLP. In the case of a conventional partnership, the partners are jointly and severally liable for each debt and obligation of the partnership firm.

7. What shall be the financial year of a limited liability partnership?

As per Section 2(1)(l) of the Act, **“Financial year”** in relation to the limited liability partnership, means the period from the 1st day of April of a year to the 31st day of March of the following year.

In the case of a limited liability partnership incorporated after the 30th day of September of a year, the financial year may end on the 31st day of March of the year next following that year.

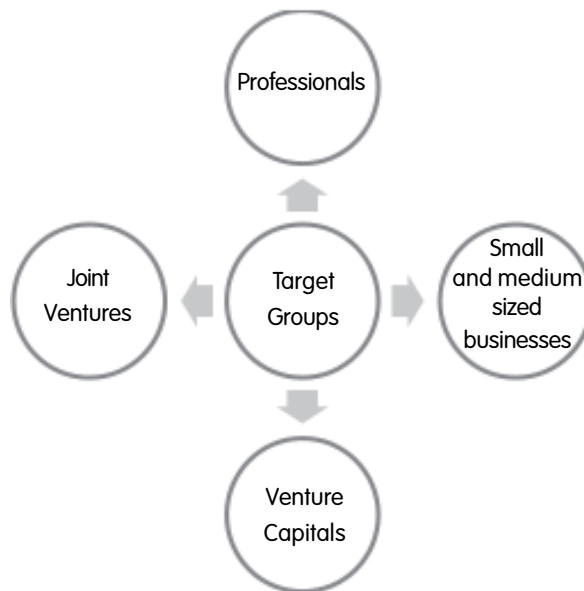
For example, if ABC Trading LLP is incorporated on 1st May, 2016, then the financial year of the LLP starts from 1st May, 2016, and ends on 31st March, 2017. However,

if ABC Trading LLP is incorporated on 5th October, 2016, then the financial year of the LLP starts from **5th October, 2016**, and end on **31st March, 2018**.

8. Who are the target groups of a limited liability partnership?

A Limited Liability Partnership may be formed by any group to carry on any lawful business with the view to make profit. As per clause (e) of Section 2(1) of the Act, the term **“business”** is defined to include every trade, profession, service and occupation.

Accordingly, this business vehicle may be used by:



Note: For the professional category, it shall be subject to approval by their respective Institutes.

9. Who can be a partner of a limited liability partnership?

As per clause (q) Section 2(1) of the Act, a **“partner”**, in relation to a limited liability partnership, means any person who becomes a partner in the limited liability partnership in accordance with the limited liability partnership agreement.

As per Section 5 of the Limited Liability Partnership Act, 2008, any individual or body corporate can be a partner in a limited liability partnership.

However, that individual shall not be capable of becoming a partner of a limited liability partnership, if –

- (a) he has been found to be of unsound mind by a Court of competent jurisdiction and the finding is in force;

- (b) he is an undischarged insolvent; or
- (c) he has applied to be adjudicated as an insolvent and his application is pending.

**10. Can a body corporate be a partner to a limited liability partnership?
What is the meaning of 'Body Corporate' as per Limited Liability Act, 2008?**

Yes, a body corporate can be a partner to a limited liability partnership firm as per Section 5 of the Act.

As per clause (d) of Section 2(1) of the, a "body corporate" means a company as defined in section 3 of the Companies Act, 1956 and it includes-

- (i) a limited liability partnership registered under this Act;
- (ii) a limited liability partnership incorporated outside India; and
- (iii) a company incorporated outside India,

but does not include –

- (i) a corporation sole;
- (ii) a co-operative society registered under any law for the time being in force; and
- (iii) any other body corporate (not being a company as defined in section 3 of the Companies Act, 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.

11. What is a "foreign limited liability partnership"?

As per Section 2(1)(m) of the Act, a "**foreign limited liability partnership**" means a limited liability partnership formed, incorporated or registered outside India which establishes a place of business within India.

12. Whether Hindu Undivided Family (HUF) / its Karta can become partner / designated Partner in Limited Liability Partnership (LLP).

As per section 5 of the Act, only an individual or body corporate may be a partner in a Limited Liability Partnership. It is further clarified vide **MCA General Circular No. 13/2013**, dated 29th July, 2013, read with MCA General Circular No. 2/16 dated 15th January, 2016, that an HUF cannot be treated as a body corporate for the purposes of LLP Act, 2008. Therefore, a HUF or its Karta cannot become a partner or designated partner in LLP.

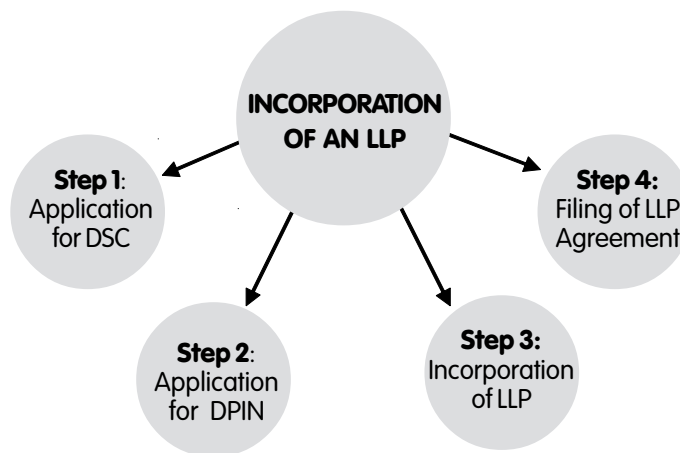
13. Whether a trust or a trustee can become a partner in a LLP?

General Circular No. 37/2014, dated 14th October, 2014, clarified that the trustee being a body corporate and representing a trust in 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, is not barred to hold partnership in a LLP in its name without the addition of the statement that it is a trustee.

FORMATION AND REGISTRATION OF LIMITED LIABILITY PARTNERSHIP

1. How is a LLP incorporated?

A LLP can be incorporated following four simple steps:



(1) Application for DSC

- Every Individual proposed to be appointed as the partner and designated Partner of the LLP shall obtain a Digital Signature Certificate.

(2) Application for DIN

- Every LLP shall have atleast 2 partners. Every LLP shall have atleast 2 individual as designated partners out of which atleast one of them shall be a resident in India.
- The Designated partners of the proposed LLP are required to apply for DIN in **Form DIR-3** by attaching prescribed documents.
- The Designated Partner Identification No./DIN is valid for life time of applicant.
- Every Designated Partner shall along with his consent to be a designated partner, intimate his DPIN to LLP in **Form 9**.
- If the proposed designated partner already having DIN/DPIN, he need not apply for another DIN/DPIN.

- If the proposed designated partner already having DIN, he need not require to apply for another DPIN, the DIN will be treated as DPIN.

(3) Incorporation of LLP

(i) Application for reservation of name: The application for the reservation of the name of the LLP is to be filed in **Form 1**. Such name shall be available for reservation for a period of 3 months from the date of intimation by the Registrar.

Every limited liability partnership shall have either the words "limited liability partnership" or the acronym "LLP" as the last words of its name.

Criteria for name approval: The name of LLP should not be one prohibited under Emblems and Names (Prevention of Improper Use) Act, 1950. The proposed name is not generally reserved in case it includes the words as provided in Section 15(2) of the Act read with Rule 18(2).

(ii) Filing of Incorporation Document:

- Two or more persons associated for carrying on a lawful business with a view to profit shall subscribe their names to an incorporation document;
- The incorporation document is required to be filed in **Form 2** with the Registrar of the State in which the registered office of the limited liability partnership is to be situated;
- The incorporation document shall state —
 - a. name of the limited liability partnership;
 - b. proposed business of the limited liability partnership;
 - c. address of the registered office of the limited liability partnership
 - d. name and address of each of the persons who are to be partners of the limited liability partnership on incorporation;
 - e. name and address of the persons who are to be designated partners and partners of the limited liability partnership on incorporation;
 - f. contain such other information concerning the proposed limited liability partnership as may be prescribed.
- Along with the incorporation document there shall be filed, a statement in Part B of Form 2, made by either an advocate, or a Company Secretary or a Chartered Accountant or a Cost Accountant,

who is engaged in the formation of the limited liability partnership and by any one who subscribed his name to the incorporation document, that all the requirements of this Act and the rules made thereunder have been complied with, in respect of incorporation and matters precedent and incidental thereto.

- In case of incorporation, the individual who has given consent to act as partner or designated partner shall file consent in Form 2 along with fee.
- When the requirements imposed by clauses (b) and (c) of sub-section (1) of section 11 have been complied with, the Registrar shall retain the incorporation document and, he shall, within a period of 14 days –
 - (a) register the incorporation document; and
 - (b) give a certificate that the limited liability partnership is incorporated by the name specified therein.
- The Registrar may accept the statement (made by an advocate/ Company Secretary/ Chartered Accountant/Cost Accountant, who is engaged in the formation of the limited liability partnership and by any one who subscribed his name to the incorporation document, that all the requirements of this Act and the rules made thereunder have been complied with, in respect of incorporation and matters precedent and incidental thereto) as sufficient evidence that the requirement has been complied with.
- The certificate shall be signed by the Registrar and authenticated by his official seal.
- The certificate shall be conclusive evidence that the limited liability partnership is incorporated by the name specified therein.
- Every LLP so registered shall be assigned a LLP identification number (LLPIN) in one consecutive series. [Rule 14]
- Where the intending partner is a body corporate, the following is required to be attached with incorporation document:
 - o copy of Resolution on the letterhead of such body corporate to become a partner in the proposed LLP and
 - o 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

- In the case of foreign nationals residing outside India or foreign body corporate(s) registered outside India, seeking to register a LLP in India, the name, address and signature of an individual or nominee or nominee & Designated Partner of a body corporate on the incorporation document, proof of identity, where required and documents referred in this rule, shall be duly certified and the provisions of sub-rule (2) of Rule 34, shall apply mutatis mutandis for this purpose.

(4) Filing of LLP Agreement

LLP shall file its LLP Agreement with the Registrar in **Form 3** within 30 days of its incorporation of the LLP. [Rule 21]

Note: Any change made in the limited liability partnership agreement shall be filed in **Form 3** within 30 days of such change along with the fee as provided in Annexure 'A'.

2. What are the penal provisions for the limited liability partnerships for non-publication of its name on certain official documents?

As per Section 21 of the Act, every limited liability partnership shall ensure that its invoices, official correspondence and publications bear the following:

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

Penalty:

Any limited liability partnership failing to do so shall be punishable with fine which shall not be less than two thousand rupees but can be extended to twenty-five thousand rupees.

3. Can a service of documents to a limited liability partnership take place on an address other than its registered office?

A limited liability partnership shall give an address for service of documents within the jurisdiction of the Registrar where its registered office is situated. Such address shall include the postal code and e-mail address.

As per sub-section (2) of Section 13 of the Act read with Rule 16, a limited liability partnership, in addition to the registered office address, declare any other address as its address for service of documents,

- in the manner laid down in the limited liability partnership agreement
- with consent of all partners (where no such manner defined in limited liability partnership agreement)

The intimation of other address for service of documents to LLP shall be given to the Registrar in **Form 12**, within thirty days of complying with the requirements along with the fee as mentioned in Annexure 'A' of the Rules.

4. Whether a person who is having DIN would be required to obtain DPIN required under Limited Liability Partnership Act, 2008?

The Ministry, vide notification dated 5th July, 2011, has integrated the Director's Identification Number (DIN) issued under Companies Act, 1956 with Designated Partnership Identification Number (DPIN) issued under Limited Liability Partnership Act, 2008 with effect from 9th July, 2011. The position of DIN and DPIN holders were clarified as follows:

- If a person has been allotted DIN, the said DIN shall also be used as DPIN for all purposes under Limited Liability Partnership Act, 2008.
- If a person has been allotted DPIN, the said DPIN will also be used as DIN for all the purposes under Companies Act, 1956.
- If a person has been allotted both DIN and DPIN, his DPIN will stand cancelled and his DIN will be used as DIN as well as DPIN for all purposes under Limited Liability Partnership Act, 2008 and Companies Act, 1956.

5. Can a Limited Liability Partnership use the word 'National' or 'Bank' or 'Stock Exchange' or 'Exchange' in its names?

Circular No. 2/2014, dated 11th February, 2014, clarified that no Limited Liability Partnership should be allowed to be registered with the word 'National' as part of its title unless it is a government company and the Central / State Government(s) has a stake in it.

Similarly, the word 'Bank' may be allowed in the name of an entity only when such entity produces a **'No Objection Certificate'** from the **RBI** in this regard.

By the same analogy, the word 'Stock Exchange' or 'Exchange' should be allowed in name of a company only where **'No Objection Certificate'** from **SEBI** in this regard is produced by the promoters.

Also, one may refer Rule 18(2) in this regard.

6. What is the procedure of change in registered office of a LLP?

As per Rule 17, procedure given below for change in registered office of a LLP shall be followed:

If procedure is provided in the limited liability partnership agreement:

- The limited liability partnership may change its registered office from one place to another by following the procedure as laid down in the limited liability partnership agreement.

If procedure is not provided in the limited liability partnership agreement:

- Where the limited liability partnership agreement does not provide for such procedure, consent of all partners shall be required for changing the place of registered office of limited liability partnership to another place.
- Notice of change of place of registered office shall be given to Registrar in **Form 15**, within 30 days of complying the above, along with fee mentioned in Annexure 'A' of the Rules.

➤ ***Where the change in place of registered office is from one State to another State:***

- The limited liability partnership having secured creditors shall also obtain consent of such secured creditors.
- The limited liability partnership 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 the registered office of the limited liability partnership is situated and circulating in that district giving notice of change of registered office.
- Notice of change of place of registered office shall be given to Registrar in **Form 15**, within 30 days of complying the above, along with fee mentioned in Annexure 'A' of the Rules.

➤ ***Where the change in place of registered office is from one place to another place within the state from the jurisdiction of one Registrar to the jurisdiction of another Registrar or from one state to another state:***

- The limited liability partnership shall file the notice in **Form 15** with the Registrar from where the limited liability partnership 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.

Note: Where there is any conviction, ruling, order or judgment of any Court, Tribunal or other authority against the limited liability partnership,

the particulars of such prosecutions initiated against or show-cause notices received by the limited liability partnership for the alleged offences under the LLP Act shall be stated in the notice of change of place of registered office to be filed with the Registrar.

7. How can limited liability partnership proceed in case its name is used by another limited liability partnership?

- As Section 17, 18 and 19 of the Act read with Rule 19, a limited liability partnership or a body corporate or any other entity which already has a name which is similar to or which too nearly resembles the name of a limited liability partnership incorporated subsequently, may apply to the Registrar in **Form 23** along with fee as mentioned in Annexure 'A' of the Rules, to give a direction to that limited liability partnership incorporated subsequently to change its name.
- **The application shall state –**
 - (i) 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;
 - (ii) the name with which the limited liability partnership or the company or any other entity was incorporated or registered;
 - (iii) the grounds of objection to the name of the limited liability partnership incorporated subsequently.
- The application shall be verified by the person making it.
- **The person making the application shall attach –**
 - (a) the authority under which he is making such an application;
 - (b) 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.

The Registrar shall not consider any application to give a direction to a limited liability partnership on the ground unless the Registrar receives the application **within twenty-four months** from the date of registration of the limited liability partnership under that name.

8. What is the procedure of change in name of a LLP?

As per Rule 20, procedure given below for change in name of a LLP shall be followed:

If procedure is provided in the limited liability partnership agreement:

- The limited liability partnership may change its name by following the procedure as laid down in the limited liability partnership agreement.

If procedure is not provided in the limited liability partnership agreement:

- Where the limited liability partnership agreement does not provide such procedure, consent of all partners shall be required for changing the name of the limited liability partnership.

Procedure:

- Form 1 shall be filed with the Registrar for the reservation of new name.
- Form 3 shall be filed with the Registrar for the change in the LLP Agreement with regard to new name within thirty days of such change along with the fee as provided in Annexure 'A' of the Rules.
- Notice of change of name shall be given to the Registrar in **Form 5**, within 30 days of complying with the above, along with a fee as mentioned in Annexure 'A' of the Rules.
- The Registrar on being satisfied that the changed name is the one as reserved by him shall issue a fresh certificate of incorporation in the new name and the changed name shall be effective from the date of such certificate.

9. Whether a LLP can be registered whose one of their objects is to carry on the profession of Chartered Accountant, Cost Accountant, Architect, Company Secretary etc.?

As per **General Circular No. 2/2012**, dated the 1st March, 2012, at the time of incorporation of companies or LLP's where one of the objects is to carry on the business of Banking, Insurance or to practice the profession of Chartered Accountancy, Cost Accountancy & Company Secretaries, then the concerned Registrar of Companies / Registrar of LLP shall incorporate the same only on production of in-principle approval / NOC from the concerned regulator / professional Institutes.

Where one of the objects is to carry on the business / profession of Architecture, then the concerned Registrar of Companies / Registrar of LLP shall incorporate the same only on production of in-principle approval / NOC from the concerned regulator.

10. What is the effect of registration on a LLP?

As per Section 14 of the Act, on registration, the limited liability partnership shall, by its name, becomes capable of –

- (a) suing and being sued
- (b) acquiring, owning, holding and developing or disposing of property, whether movable or immovable, tangible or intangible
- (c) having a common seal
- (d) doing and suffering such other acts and things as bodies corporate may lawfully do and suffer.

11. How a foreign limited liability partnership can establish its place of business in India?

Any Foreign Limited Liability Partnership [FLLP] can establish its place of business in India by filing **Form 27** (Registration of particulars by Foreign Limited Liability Partnership), along with the required documents as mentioned in the Limited Liability Partnership Rules, 2009 within thirty days of establishing a place of business in India.

12. What are the attachments of Form 27?

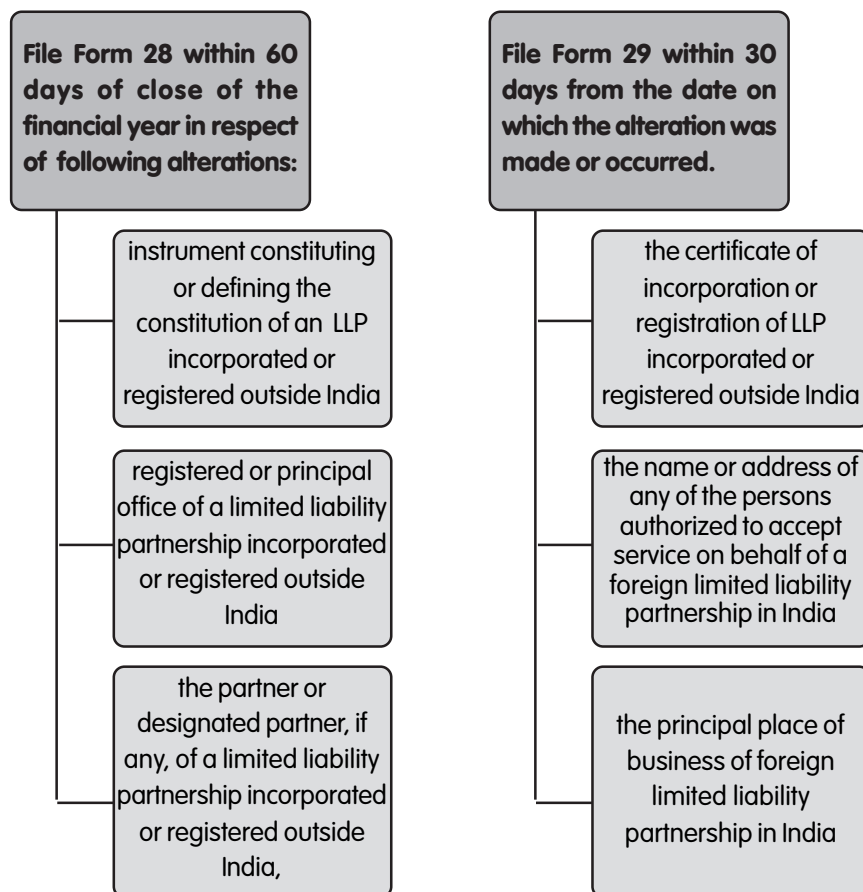
ATTACHMENTS OF FORM 27

- ➔ Copy of the certificate of incorporation or registration of LLP
- ➔ Full address of the registered or principal office of the LLP in the country of its incorporation
- ➔ Full address of the office of the LLP in India (i.e. principal place of business in India)
- ➔ 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 LLP, service of process and notices or other documents required to be served on the LLP

13. What kind of alterations is required to be filed by a Foreign Limited Liability Partnership?

As per clause (i) and (ii) of sub-rule (3) of Rule 34, a Limited Liability Partnership

Firm incorporated or registered outside India is required to file its alterations in the following cases in specified Forms given below in the chart:



14. How an existing Partnership Firm can be converted into a LLP?

A firm may convert into a Limited Liability Partnership by complying with the requirements set out in the **Second Schedule** of the Act.

Eligibility: A may apply to convert into a LLP in accordance to the said Schedule, 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.

Forms: Any existing partnership firm that is willing to get converted into a LLP will need to apply through **Form 17** (Application and statement for the conversion of a firm into LLP).

Form 17 needs to be filed along with Form 2 (Incorporation document and

Subscriber's statement). For the purposes of Para 5 of the said Schedule, the limited liability partnership shall inform the concerned Registrar of Firms about conversion of firm into limited liability partnership in **Form 14**.

15. How a private company/ unlisted public company can be converted into a LLP?

A private company may convert into a LLP by complying with the requirements set out in the **Third Schedule** of the Act.

An unlisted public company may convert into a LLP by complying with the requirements set out in the **Fourth Schedule** of the Act.

Eligibility: A company may convert into a LLP 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 LLP to which it converts comprise all the shareholders of the Company and no one else.

Forms: Any private company/ unlisted public company that is willing to get converted into a LLP need to apply through **Form 18** (Application and Statement for conversion of a private company/ unlisted public company into limited liability partnership).

16. In which Form the Registrar issue a Certificate of Registration on conversion of a firm, private company or an unlisted public company into limited liability partnership?

The Registrar shall, on conversion of a firm, private company or an unlisted public company into limited liability partnership, issue a Certificate of Registration under his seal in **Form 19**.

17. Does the applicant have the right to appeal against the refusal by Registrar with regard to conversion of a firm, private company or an unlisted public company into limited liability partnership?

If the Registrar refuses the registration, the applicant firm or private company or unlisted public company, as the case may be, may apply to the Tribunal within sixty days from the date of receipt of such intimation of the refusal.

18. Can multiple partnership firms be converted into a single LLP?

It is clarified as per **General Circular No 09/2013**, dated 30th April, 2013, that the provisions of sections 55 and 58 of the Limited Liability Partnership Act, 2008, read with Second Schedule thereto, inter-alia, provide for requirements in respect of conversion of a single partnership firm into a single LLP. The LLP Act, 2008 does not provide for conversion of two or more firms into a single LLP.

Thus, multiple firms cannot be converted into multiple LLP's.

19. What is the position of a CA Audit Firm if it converts itself into a LLP?

As per Section 58(4)(b) of the Act, on conversion of a firm into a LLP, all property, 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 LLP without further assurance, act or deed.

It has been clarified in the **General Circular No. 09/2013**, dated 30th April, 2013, that if a CA Audit Firm, being an auditor in a company under the Companies Act, 1956, gets converted into a LLP after complying with the relevant provisions of the Act, then such a LLP, would be deemed to be the auditor of the said company.

MANAGEMENT OF LIMITED LIABILITY PARTNERSHIP

1. Who is eligible to become the partner as per Limited Liability Partnership Act, 2008?

As per Section 22 of the Act, following persons are eligible to become partners of a limited liability partnership firm;

- Persons whose names are subscribed in the incorporation document
- Persons who become partners by and in accordance with the limited liability partnership agreement

Every partner shall intimate the LLP, any change in his name or address to the LLP in **Form 6** within 15 days of such change. LLP shall inform the Registrar in **Form 4** within 30 days on becoming or cessation of partner or changing of name or address of the partner.

2. What is the difference between partner and designated partner as per Limited Liability Partnership Act, 2008?

As per Section 2(q) of the Act, a “partner”, in relation to a limited liability partnership, means any person who becomes a partner in the limited liability partnership in accordance with the limited liability partnership agreement.

As per Section 2(j) of the Act, “designated partner” means any partner designated as such pursuant to section 7.

In regard to “Designated Partners”, Section 7 of the Act states:

- (i) Every limited liability partnership shall have at least two designated partners who are individuals and at least one of them shall be a resident in India.
- (ii) In case of a LLP in which all the partners are bodies 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 bodies corporate shall act as designated partners.
- (iii) Herein, “**resident in India**” means a person who has stayed in India for a

period of not less than one hundred and eighty-two days during the immediately preceding one year.

(iv) If the incorporation document-

- specifies who are to be designated partners, such persons shall be designated partners on incorporation; or
- states that each of the partners from time to time of limited liability partnership is to be designated partner, every such partner shall be a designated partner;
- any partner may become a designated partner by and in accordance with the limited liability partnership agreement and a partner may cease to be a designated partner in accordance with limited liability partnership agreement.

3. Can change in partners affect the existence of the limited liability partnership?

As per sub-section (3) of Section 3 of the Act, any change in the partners of a limited liability partnership shall not affect the existence, rights or liabilities of the limited liability partnership.

4. What is the status of a partner towards its LLP?

As per Section 26 of the Act, every partner of a limited liability partnership is, for the purpose of the business of the limited liability partnership, the agent of the limited liability partnership, but not of other partners.

5. What shall govern the mutual rights and liabilities of partners of a limited liability partnership firm?

As per Section 23 of the Act, the **limited liability partnership agreement**, between the partners, or between the limited liability partnership and its partners, shall govern the following:

- the mutual rights and duties of the partners of a limited liability partnership, and
- the mutual rights and duties of a limited liability partnership and its partners,

In case of absence of Limited Liability Partnership Agreement:

In case the limited liability partnership agreement is absent the mutual rights and duties of the partners and the mutual rights and duties of the limited liability partnership and the partners shall be determined by the provisions set out in the First Schedule to the LLP Act.

6. What are the consequences in case of reduction of partners below the minimum statutory limit?

As per Section 6 of the Act, every limited liability partnership shall have at least two partners. And if at any time the number of partners of a limited liability partnership is reduced below two and the limited liability partnership carries on business for more than six months while the number is so reduced, the person, who is the only partner of the limited liability partnership during the time that it so carries on business after those six months and has the knowledge of the fact that it is carrying on business with him alone, shall be liable personally for the obligations of the limited liability partnership incurred during that period.

Thus, it is clear from the above provision that the liability of Mr. Y (only partner) until 30th September, 2016, is NIL, but after that period he becomes personally liable for the obligations of the LLP till the time the number of partners of the LLP is increased to a minimum of two.

7. What is the extent of liability of LLP?

As per Section 27 of the Act, in the following cases the liability of LLP arises as follows:

Cases where liability of LLP arises:

- The limited liability partnership is 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.
- An obligation of the limited liability partnership whether arising in contract or otherwise, shall be solely the obligation of the limited liability partnership.
- The liabilities of the limited liability partnership shall be met out of the property of the limited liability partnership.

Cases where liability of LLP does not arise

- a limited liability partnership is not bound by anything done by a partner in dealing with a person if –
 - (a) the partner in fact has no authority to act for the limited liability partnership in doing a particular act; and
 - (b) the person knows that he has no authority or does not know or believe him to be a partner of the limited liability partnership.

8. What is the extent of liability of partner?

As per Sections 28, 29, 30 and 31 of the Act, in the following cases the liability of partner arises:

➤ ***Extent of liability of partner (Section 28):***

- A partner is not personally liable, directly or indirectly for an obligation of limited liability partnership solely by reason of being a partner of the limited liability partnership.
- The personal liability of a partner arises for his own wrongful act or omission, but a partner shall not be personally liable for the wrongful act or omission of any other partner of the limited liability partnership.

➤ ***Holding out (Section 29):***

- 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 a limited liability partnership is liable to any person who has on the faith of any such representation given credit to the limited liability partnership, 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.

Exceptions:

- Where any credit is received by the limited liability partnership as a result of such representation, the limited liability partnership shall, without prejudice to the liability of the person so representing himself or represented to be a partner, be liable to the extent of credit received by it or any financial benefit derived thereon.
 - Where after a partner's death the business is continued in the same limited liability partnership name, the continued use of that name or of the deceased partner's name as a part thereof shall not of itself make his legal representative or his estate liable for any act of the limited liability partnership done after his death.
- ***Unlimited liability in case of fraud (Section 30):***
- In the 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, the liability of the limited liability partnership 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 limited liability partnership.

- In case any such act is carried out by a partner, the limited liability partnership is liable to the same extent as the partner unless it is established by the limited liability partnership that such act was without the knowledge or the authority of the limited liability partnership.
- Where any business is carried on with such intent or for 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.
- 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, then 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 damage by reason of such conduct .

Exception:

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.

Whistle blowing (Section 31):

The Court or Tribunal may reduce or waive any penalty leviable against any partner or employee of a limited liability partnership, if it is satisfied that –

- (a) such partner or employee of a limited liability partnership has provided useful information during investigation of such limited liability partnership;
or
- (b) 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 this Act or any other Act.

No partner or employee of any limited liability partnership may 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.

9. Whether Limited Liability Partnership of Chartered Accountants eligible to be appointed as an auditor by a Company.

A body corporate is disqualified from the appointment as an auditor by a company under Section 226(3)(a) of the Companies Act, 1956 and Section 141 (3)(a) of the Companies Act, 2013. Since LLP is a body corporate as per Section 3(1) of the Limited Liability Partnership Act, 2008, thus, LLP among Chartered Accountants will not be qualified for appointment as auditor under section 226(3)(a) of the Companies Act, 1956.

However, as per **General Circular No. 30A/2011**, dated 26th May, 2011, it was clarified that Limited Liability Partnership of Chartered Accountants will not be treated as body corporate for the limited purpose of Section 226(3)(a) of the Companies Act, 1956.

Further, as per clause (a) of the sub-section (3) of the section 141 of the Companies Act, 2013, a limited liability partnership registered under the Limited Liability Partnership Act, 2008, is eligible for appointment as an auditor by a company.

10. How does the appointee company take note of the change in the status of its CA Audit Firm once it gets itself converted into a CA Audit LLP?

It has been clarified in the **General Circular No. 09/2013**, dated 30th April, 2013, and also drawing reference from Notification No. SO 1152(E) dated 23rd May, 2011 and General Circular 30A dated 26th May, 2011, the appointee company may take note of change in the status of its auditor i.e. CA Audit Firm gets converted into CA Audit LLP, through a resolution of the Board.

11. Is it necessary for a partner to bring its contribution in the Limited Liability Partnership in cash?

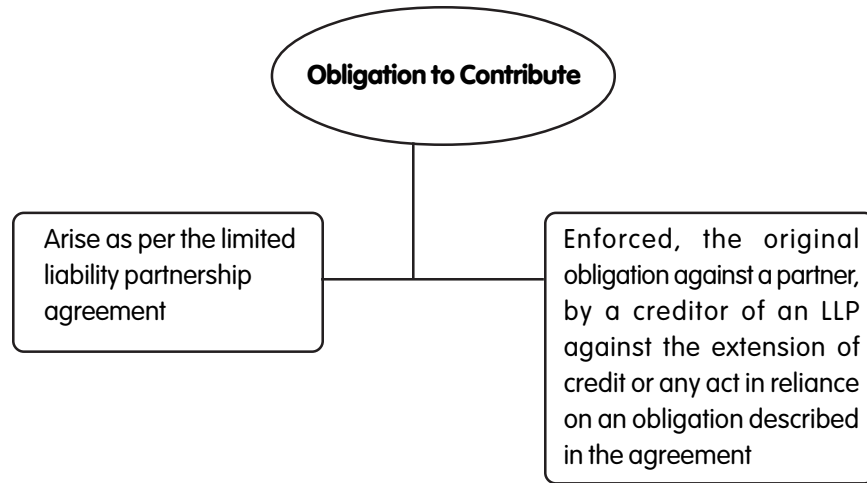
As per Section 32 of Act, contribution of a partner may consist of tangible, movable or immovable or intangible property or other benefit to the limited liability partnership, including money, promissory notes, other agreements to contribute cash or property, and contracts for services performed or to be performed.

Thus, it is not necessary for the partner to contribute in the Limited Liability Partnership in cash. It can take any form as stated in Section 32.

12. How does the obligation to contribute arise in case of a partner in a Limited Liability Partnership?

As per Section 33 of the Act, obligation of a partner to contribute money or other

property or other benefit or to perform services for a limited liability partnership shall arise as follows:



COMPLIANCE REQUIREMENTS

1. Whether the contribution given by partners required to be disclosed?

As per Section 32 of the Limited Liability Partnership Act, 2008 read with sub-rule (1) of Rule 23 of the Limited Liability Partnership Rules, 2009, the contribution of each partner shall be accounted for and disclosed in the Accounts of the limited liability partnership along with nature of contribution and amount.

2. How the contribution of a partner of a LLP in kind is valued?

As per sub-rule (2) of Rule 23, the contribution of a partner consisting of tangible, movable or immovable or intangible property or other benefits brought or contribution by way of an agreement or contract for services 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.

3. How a LLP is required to maintain its books of accounts?

As per Section 34 of the Act, the LLP shall maintain its books of accounts relating to its affairs for each year of its existence on cash basis or accrual basis and according to double entry system of accounting.

The LLP shall maintain its books of accounts at its registered office for a period of Eight years.

4. What information is covered under the Books of Accounts maintained by a LLP?

As per Rule 24, the Books of Accounts of a limited liability partnership shall contain the following:

- particulars of all sums of money received and expended and the matters in respect of which the receipt and expenditure takes place;
- a record of the assets and liabilities;
- 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.

5. For how long the Books of Accounts are required to be preserved?

As per sub-rule (3) of Rule 24, the books of account of a limited liability partnership are required to be preserved for eight years from the date on which they are made.

6. What are the documents which are required to be filed annually by LLP?

- As per sub-section (3) of Section 34 of the Act, read with sub-rule (4) of Rule 24, every limited liability partnership shall file the **Statement of Account and Solvency in Form 8** with the Registrar, within a period of thirty days from the end of six months of the financial year to which the Statement of Account and Solvency relates.
- As per Section 35, every LLP is required to file an Annual Return duly authenticated with the Registrar in 60 days of closure of financial year in **Form 11**.

7. How does a foreign limited liability partnership file its Statement of Account and Solvency?

As per sub-rule (4) of Rule 34, every foreign limited liability partnership its **Statement of Account and Solvency in Form 8** with the Registrar the in accordance with provisions of rule 24 duly signed by the authorized representatives within a period of 30 days from the end of six months of the financial year

8. Who shall sign the Statement of Account and Solvency of a LLP?

The designated partners on behalf of the limited liability partnership are required to sign the Statement of Account and Solvency of a LLP.

9. Whether accounts of a LLP are required to be mandatorily audited?

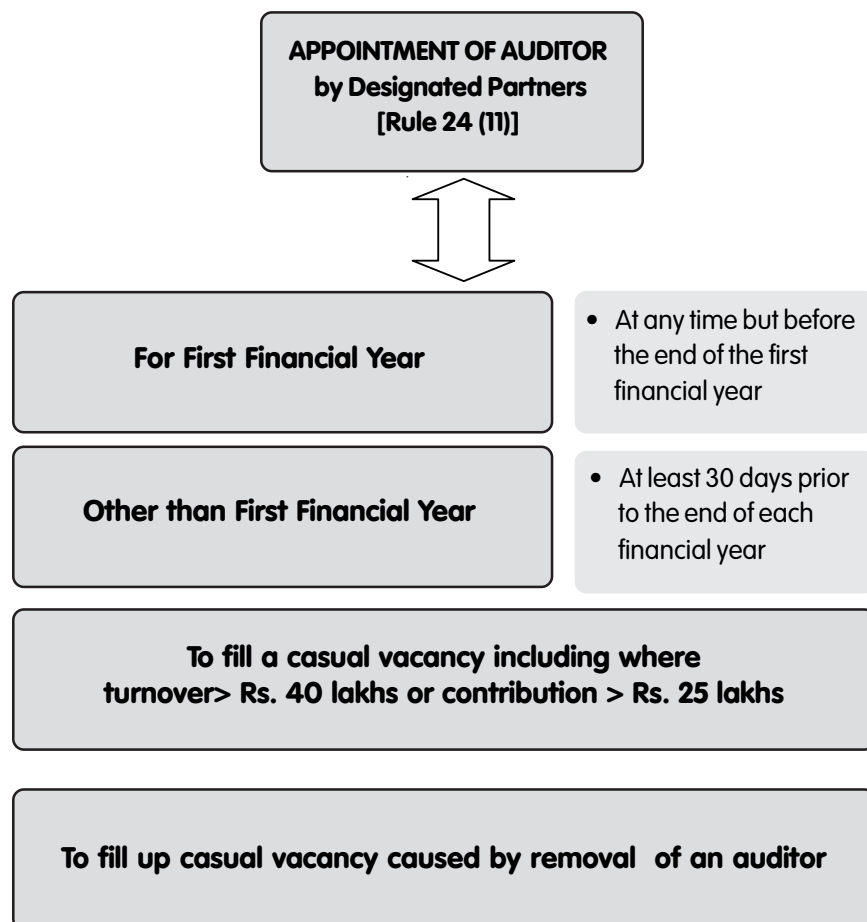
As per sub-section (4) of Section 34 of the Act, read with sub-rule (8) of Rule 24, the accounts of following limited liability partnerships, shall be required to get its accounts audited:

- whose turnover in any financial year exceeds forty lakh rupees, or
- whose contribution exceeds twenty-five lakh rupees

10. Who shall be eligible to be appointed as an auditor of a LLP?

A Chartered Accountant in practice shall be qualified for appointment as an auditor of a limited liability partnership.

11. How an auditor of a limited liability partnership is appointed by designated partners?

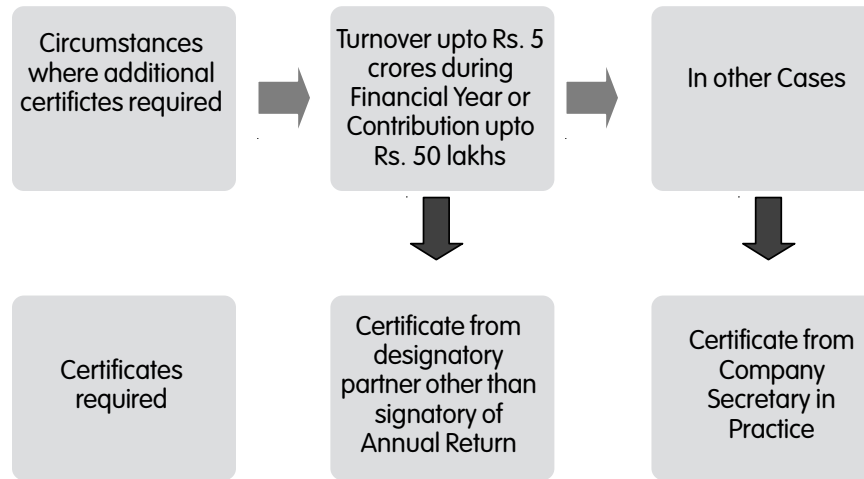


12. Whether the Limited Liability Partnership Act, 2008, lays down the procedure of fixing remuneration of the appointed auditor?

As per sub-rule (17) of Rule 24, the remuneration of an auditor appointed by the limited liability partnership shall be fixed by the designated partners or by following the procedure as laid down in the limited liability partnership agreement.

13. In what circumstances additional certificates are required to be attached to the Annual Return?

As per Rule 25(2), in the following cases additional certificates are required:



14. List down the records required to be preserved by the limited liability partnership.

As per Rule 27, the records of a LLP are required to be preserved in the office of Registrar as mentioned below:

➤ **Documents to be preserved permanently:**

Documents specified in Annexure B to the said Rules are:

S. No.	Name of Document	Period of Preservation
1.	Incorporation document [Section 11(1)(b)]	Permanent
2.	Notice of situation of registered office [Section 13]	Permanent
3.	Information with regard to Limited Liability Partnership Agreement or any changes made therein [Section 23(2)]	Permanent
4.	Notice of other address of any limited liability partnership at which documents to be served [Section 13(2)]	Permanent

➤ **Records to be preserved for 21 years:**

All papers, registers, refund orders and correspondence relating to the limited liability partnership liquidation accounts.

➤ **Records to be preserved for 5 years:**

- (a) copies of Government orders relating to limited liability partnership;

- (b) registered documents of limited liability partnership which have been fully wound up and finally dissolved together with correspondence relating to such limited liability partnership;
- (c) papers relating to legal proceedings from the date of disposal of the case and appeal, if any;
- (d) copies of statistical returns furnished to Government;
- (e) all correspondences including correspondences relating to scrutiny of accounts, annual returns, prosecutions, reports to the Central Government and the Tribunal and the correspondences relating to complaints.

In case of prosecution matter, the date is to be recorded from the date of disposal of the case and appeal, if any.

➤ **Records to be preserved for 3 years:**

- (a) All books, records and papers, other than those specified in other categories.
- (b) Routine correspondence regarding payment of fees, additional filing fees and correspondence about the return of documents.

➤ **Records to be preserved as specified in Annexure C of the said Rules:**

The registered documents specified in Annexure 'C' shall be preserved for the period indicated against them in the said Annexure.

Documents specified in Annexure C to the said Rules are :

S. No.	Name of Document	Period of Preservation
1.	Statement of compliance with requirements of the Act by an Advocate or Company Secretary or Chartered Accountant or Cost Accountant in whole-time practice and by any person who subscribed his name to the incorporation document [Section 11(1)(c)]	5 years
2.	Notice of a person ceasing to be a partner and any change in the name or address of a partner	5 years
3.	Registered documents relating to LLP struck off under Section 75 together with correspondence or copy of the order of restoration of the LLP into the register	5 years

4.	Annual return of a limited liability partnership	5 years
5.	Consent of candidates to act as designated partner to be filed with the Registrar [section 7(4)]	5 years
6.	Consent to act as a partner	5 years
7.	Statement by all the partners of firm containing particulars of firm along with application for its conversion into limited liability partnership	5 years
8.	Statement by all the shareholders containing particulars of private company/unlisted public company along with application for its conversion into limited liability partnership	5 years
9.	Certified copy of the order(s) of the Tribunal under section 60/61/62.	5 years
10.	Copy of the order of dissolution of a LLP by Tribunal [Section 63]	5 years
11.	Statement of Account and Solvency	8 years

➤ **Records of foreign limited liability partnerships to be preserved for 3 years:**

Registered documents of foreign limited liability partnerships which cease to have any place of business in India shall be destroyed after expiry of three years from the date such limited liability partnerships cease to have any place of business in India.

COMPROMISE, ARRANGEMENT OR RECONSTRUCTION

1. Who can make an application for compromise or arrangement to the Tribunals?

As per sub-section (1) of the section 60 of the Act, a compromise or arrangement can be proposed between the following parties:

- i. a limited liability partnership and its creditors; or
- ii. a limited liability partnership and its partners.

The Tribunal may entertain application for compromise or arrangement made by LLP or partner of LLP or in case the LLP is being wound up, by the Liquidator.

2. List the documents required to filed with an application for meeting of creditors or partners or creditors and partners?

An application under sub-section (1) of section 60 of the Act, read with Rule 35, ***disclosing all the material facts relating to the LLP, including the latest financial position of the LLP and the pendency of any investigation proceedings in relation to the LLP***, for an order convening a meeting of creditors or partners or creditors and partners, shall be supported by an affidavit in **Form 20** and a copy of the proposed compromise or arrangement shall be annexed to the affidavit as an exhibit thereto.

3. When the order passed by the Tribunals shall be effective?

An order made by the National Company Law Tribunal (hereinafter referred to as the ***"Tribunal"***) shall be effective only after it is filed by the limited liability partnership with the Registrar within 30 days of passing it.

4. State the powers of Tribunal to give Directions upon hearing summons?

As per sub-rule (3) of Rule 35, the Tribunal upon hearing the summons unless it decides to dismiss them, by order give directions as it may think necessary in respect of the following matters:

- (i) determining the creditors and/or of partners whose meeting or meetings have to be held for considering the proposed compromise or arrangement;
- (ii) fixing the time and place of such meeting or meetings;

- (iii) appointing a chairman for the meeting or chairmen for the meetings to be held;
- (iv) fixing the quorum and the procedure to be followed at the meeting or meetings, including voting by proxy;
- (v) determining the values of the creditors and/or the partners, as the case may be, whose meetings have to be held;
- (vi) notice to be given of the meeting or meetings and the advertisement, if any, of such notice;
- (vii) the time within which the chairman of the meeting is to report to the Tribunal the result of the meeting; and
- (viii) such other matters as the Tribunal may deem necessary.

5. Explain the procedure of compromise or arrangement in respect of a LLP?

Procedure of compromise or arrangement is briefly described below:

- Application of compromise or arrangement to be filed by creditor or partner or limited liability partnership or liquidator in case the LLP is being wound up.
- On approval of the application by the Tribunal, it shall order meeting or meetings of creditors or partners of the LLP with appropriate directions.
- Fix time and place of meeting or meetings and Appointment of Chairman by the Tribunal for the meeting or meetings.
- Notice of meeting to be sent individually by the chairman to creditors and/or partners not less than 21 clear days before the date fixed for the meeting.
- Attach following to the Notice:
 - o Copy of proposed compromise or arrangement
 - o Statement showing material interest of the designated partners, if any,
 - o Form of proxy i.e. **Form 26**
- Notice of the meeting shall be advertised if so directed by the Tribunal in such newspaper and in such manner as the Tribunal may direct.
- Chairman appointed or the LLP or the person directed to issue advertisement and notices, shall file an affidavit not less than 7 days before the date fixed for the holding of the meeting or holding of the first of

the meetings, as the case may be, showing that the directions regarding the issue of notices and the advertisement have been duly complied with.

- Within seven days after the conclusion of the meeting or where there are separate meetings, where time not fixed by the Tribunal, the Chairman to report the result thereof to the Tribunal.
- The Report shall accurately state the number of creditors or partners who were present and who voted in person or by proxy, their individual values and the way they voted.
- Within seven days of filing of the report by the chairman, the limited liability partnership or the Liquidator shall present a petition to the Tribunal for confirmation of the compromise or arrangement
- Where the limited liability partnership fails to present the petition, any creditor or partner, with the leave of the Tribunal, present the petition for confirmation and the LLP shall borne the costs thereof.
- Where no petition presented or where the compromise, or arrangement has not been approved by the requisite majority and consequently no petition for confirmation could be presented, the report of the chairman as to the result of the meeting be placed for consideration before the Tribunal for such orders as may be necessary.
- An order made by the Tribunal, binding the compromise or arrangement, on approval of requisite majority of creditors or partners, shall be filed by the limited liability partnership with the Registrar within thirty days after making such an order in **Form 22**.

6. What are the provisions for facilitating reconstruction or amalgamation of Limited Liability Partnerships?

As per the provisions of Section 62 of the Act, where an application is made to the Tribunal under section 60 for sanctioning compromise or arrangement proposed between a LLP and any such person as are mentioned in that section, and it is shown to the Tribunal that:-

- (a) compromise or arrangement has been proposed for the purposes of, or in connection with, a scheme for the reconstruction of any limited liability partnership(s), or the amalgamation of any two or more limited liability partnerships; **and**
- (b) under the scheme the whole or any part of the undertaking, property or liabilities of any limited liability partnership concerned in the scheme (transferor limited liability partnership) is to be transferred to another limited

liability partnership (transferee limited liability partnership),

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:-

- (i) the transfer to the transferee LLP of the whole or any part of the undertaking, property or liabilities of any transferor LLP;
- (ii) the continuation by or against the transferee LLP of any legal proceedings pending by or against any transferor LLP;
- (iii) the dissolution, without winding up, of any transferor LLP;
- (iv) 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
- (v) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out.

7. Explain the powers of Tribunals to enforce the sanctioned compromise or arrangements?

As per section 61(1) of the Act, where the Tribunal makes an order under section 60, sanctioning a compromise or arrangements in respect of a LLP, it:-

- a) shall have power to supervise the carrying out of the compromise or an arrangements &
- b) may at any time making such order or at any time thereafter, give such directions in regard to any matter or make such modifications in the compromise or arrangement as it may consider necessary for proper working of the compromise or arrangements.

8. To whom the summons and affidavits are issued under Rule 35 of the Limited Liability Partnership Rules, 2009?

As per sub-rule (2) of the Rule 35, the summons and affidavits are served to the following:

➤ ***Where the limited liability partnership is not the applicant:***

Summons and affidavits shall be served on the limited liability partnership in **Form 21** not less than 14 days before the date fixed for the hearing of the summons.

➤ ***Where the limited liability partnership is being wound-up***

Summons and affidavits shall be served on its liquidator in **Form 21** not less than 14 days before the date fixed for the hearing of the summons.

9. How the compromise and arrangement of a LLP gets approved?

As per sub-section (2) of Section 60 of the Act, the compromise or arrangement shall by order be binding on:

- all the creditors or
- all the partners, or
- the limited liability partnership, or

In the case of a limited liability partnership which is being wound up,

- the liquidator
- contributories

if approved by the following:

- (a) if a majority representing three-fourths in value of the creditors or partners, as the case may be, agree to any compromise or arrangement, at the meeting, and
- (b) if sanctioned by the Tribunal

10. Who shall furnish the copy of proposed compromise or arrangement on requisition and to whom?

As per sub-rule (7) of Rule 35, every creditor or partner entitled to attend the meeting, shall be furnished by the limited liability partnership, free of charge and **within 48 hours** of a requisition made for the same, with a copy of the proposed compromise and arrangement.

11. What orders can be issued by the Tribunal on the application made in respect of reconstruction or amalgamation?

As per sub-section (1) of Section 62 of the Act, the Tribunal may provide for all or any one of the following matters, by an order in respect of reconstruction or amalgamation:

- (i) the transfer to the transferee LLP of the whole or any part of the undertaking, property or liabilities of any transferor LLP;
- (ii) the continuation by or against the transferee LLP of any legal proceedings pending by or against any transferor LLP;

- (iii) the dissolution, without winding up, of any transferor LLP;
- (iv) 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
- (v) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out.

12. In which cases the Tribunal can reject the application of amalgamation or dissolution?

As per the provisos to sub-section (1) of Section (62) of the Act, the Tribunal shall not sanction compromise or arrangement in the following cases:

No amalgamation between a LLP, which is being wound up, with other LLP(s):

No scheme of amalgamation of a LLP, which is being wound up, with other LLP(s), shall be sanctioned by the Tribunal unless it receives a report from the Registrar that the affairs of the LLP have not been conducted in a manner prejudicial to the interests of its partners or to public interest.

No order of dissolution of transferor LLP:

No order of the dissolution of any transferor LLP shall be made by the Tribunal unless the Official Liquidator has, on scrutiny of the books and papers of the LLP, made a report to the Tribunal that the affairs of the LLP have not been conducted in a manner prejudicial to the interests of its partners or to public interest.

13. In which cases does revival and rehabilitation of a LLP may be proposed?

As per Rule 35(12), an arrangement for revival and rehabilitation of a LLP may be proposed in the following cases:

- (a) 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
- (b) 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
- (c) where the liquidator has filed his report before the Tribunal, in terms of directions given by the Tribunal on the report of the Liquidator.

The 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.

The application for revival and rehabilitation of a LLP 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.

14. What are the attachments to the application of revival and rehabilitation?

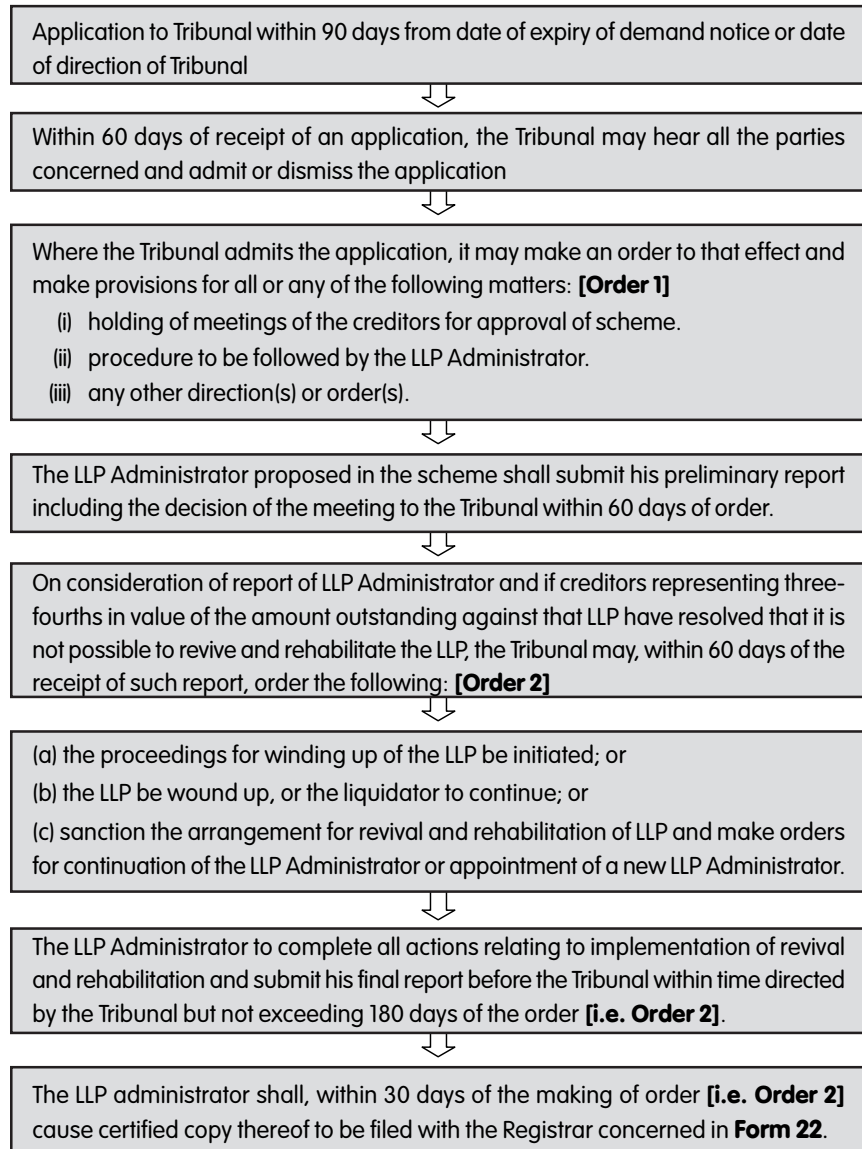
ATTACHMENTS OF FORM 27

- ➔ Statement of account and solvency of LLP for the immediately preceding financial year
- ➔ Particulars and documents relevant to scheme including financial commitments, proposed restructuring or rescheduling of debts, or an undertaking or understanding, in case from bank or financial institution through a letter or in any other case through an affidavit of concerned party(ies), or in any other form as directed by the Tribunal
- ➔ Proposed scheme of revival and rehabilitation of the LLP including proposal for appointment of a LLP Administrator

15. How much majority is required for approval of arrangement of revival and rehabilitation of a LLP?

As per the Provisos to sub-rule 15 of Rule 35, the Tribunal shall order arrangement of revival and rehabilitation of a LLP only after the required approval is fulfilled, as given in the following cases:

- ***Where arrangement for revival and rehabilitation including the proposal for appointment of LLP Administrator:*** Approved by three-fourth majority, in value, of creditors.
- ***Where the arrangement of revival and rehabilitation relates to amalgamation of the LLP with any other LLP:*** Three-fourth majority of respective partners of transferor and transferee LLPs is required for the approval.

16. What is the procedure of Revival and Rehabilitation of a LLP?**PROCEDURE OF REVIVAL AND REHABILITATION OF
LIMITED LIABILITY PARTNERSHIP [RULE 35]****17. What are the other provisions which the Tribunal can make after the considering the application of revival and rehabilitation of LLP?**

As per Rule 35(15)(ii), the order of sanction of the arrangement of revival and rehabilitation of a LLP by the Tribunal make provisions, after the considering the

application of revival and rehabilitation of LLP, for all or any of the following matters: –

- (a) powers and functions of the LLP Administrator;
- (b) the time period within which various actions proposed in the arrangement to be completed;
- (c) any such direction to the LLP or its officers or to the creditors, or to the LLP Administrator or to any other person, as may be considered necessary, for the purpose of implementation of the arrangement of revival and rehabilitation; and
- (d) any other order or orders as may be considered necessary.

STRIKING OFF, WINDING UP AND DISSOLUTION

SECTION A- STRIKING OFF

1. In which circumstances the Registrar can strike off the name of a limited liability partnership?

As per Section 75 of the Limited Liability Partnership Act, 2008, read with Rule 37(1) of the Limited Liability Partnership Rules, 2009, the Registrar can intent to strike off the name of the limited liability partnership from the register in the following circumstances:

- Where a limited liability partnership ***is not carrying on any business or operation*** –
 - (a) 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
 - (b) for a period of one year or more and such LLP has made an application in **Form 24** to the Registrar, with the consent of all partners of the limited liability partnership for striking off its name from the register.

For clause (a) the Registrar shall first send notice of his intention to strike off the name of the LLP to LLP and all its partners with the request to send their representations along with copies of the relevant documents, if any, within a period of one month from the date of the notice.

A notice issued by the Registrar or contents of an application made by the LLP shall also be placed on the website of the Ministry of Corporate Affairs for the information of the general public for a period of one month.

The Registrar shall give such LLP a reasonable opportunity of being heard before striking off its name.

2. What are the obligations of a LLP before applying for striking off its name from the Register of Limited Liability Partnerships in Form 24?

As per Rule 37(1A), the limited liability partnership shall file:

- Overdue returns in **Form 8** and **Form 11** up to the end of the financial year in which the limited liability partnership ceased to carry on its business or commercial operations before filing Form 24.

- **Enclose the following with Form 24:**

- (a) 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;
- (b) an affidavit signed by the designated partners, either jointly or severally, to the effect, –
 - (i) that the Limited Liability Partnership has not commenced business or where it commenced business, it ceased to carry on such business from(dd/mm/yyyy);
 - (ii) that the limited liability partnership has no liabilities and indemnifying any liability that may arise even after striking off its name from the Register;
 - (iii) that the Limited Liability Partnership 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;
 - (iv) that the Limited Liability Partnership has not filed any Income-tax return where it has not carried on any business since its incorporation, if applicable
- (c) 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 limited liability partnership has carried out any business and has filed such return.
- (d) copy of the initial limited liability partnership agreement, if entered into and not filed, along with changes thereof in cases where the Limited Liability Partnership has not commenced business or commercial operations since its incorporation.

3. What is the date of cessation of commercial operation?

As per Explanation to Rule 37(1A), the date of cessation of commercial operation is the date from which the Limited Liability Partnership ceased to carry on its revenue generating business 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.

4. What is the position of designated partners when the name of the LLP struck off from the register and it stands dissolved?

As per Rule 37(5) , if there is any liability of a designated partner of the limited liability partnership which is dissolved, it shall continue and may be enforced as if the limited liability partnership had not been dissolved.

SECTION B- VOLUNTARY WINDING UP

1. In which two ways a limited liability partnership can be wound up?

As per Section 63, 64 and 65 of the Limited Liability Partnership Act, 2008, read with Limited Liability Partnership (Winding up and Dissolution) Rules, 2012, (hereinafter referred to as the **"LLP Winding up Rules"**) a limited liability partnership can be wound up as follows:

- (i) Voluntary Winding up
- (ii) Compulsory Winding up (i.e. winding up by Tribunal)

2. How does the voluntary winding up takes place?

PROCEDURE OF VOLUNTARY WINDING UP

- ***Circumstances in which LLP may be wound up voluntarily [Rule 5]***

Partners may between themselves decide to stop and wind up the operations of the LLP.



LLP passes a resolution to wind up the LLP with approval of **at least three-fourths of** the total number of its partners.



A copy of the resolution shall be **filed with the Registrar** within thirty days of passing of such resolution in **Form No. 1**.

- ***Commencement of voluntary winding up [Rule 6]***

A voluntary winding up shall be deemed to commence on the date of passing of the resolution for voluntary winding up.

- ***Declaration of solvency in case of proposal to wind up voluntarily [Rule 7]***

The majority of its designated partners (not less than two) shall make a declaration in **Form No. 2** verified by an affidavit to the effect that the LLP has no debt or that it will be able to pay its debts in full within such period but not exceeding one year from the commencement of the winding up.



Declaration to be delivered to the Registrar for registration in **Form No. 3** within fifteen days immediately preceding the date of the passing of the resolution for winding up of LLP



Attachments of Form No. 3:

- statement declaring that the LLP is not being wound up to defraud any person or persons;
- statement of assets and liabilities prepared in **Form No. 4**
- report of the valuation of the assets of the LLP prepared by a valuer



LLP or its designated partners may repay any dues of the creditors or satisfy the claims of creditors before any declaration.

- ***Meeting of creditors [Rule 8]***

Where the LLP has creditors, secured or unsecured, the winding up shall not take place unless **approval of such creditors** by two-thirds majority.



Send a copy of declaration of solvency, the estimated amount of the claims due to each of the creditors and an offer for creditors to accept such claims, by registered or speed post or any mode defined in rule 15 of Limited Liability Partnership Rules 2009.



The creditors shall give to the LLP their opinion or acceptance of offer within thirty days of receipt of declaration of solvency.



Notice of decision of creditors shall be given by the LLP to the Registrar in **Form No. 5** within fifteen days from the date of receipt of consent of the creditors.

- ***Publication of resolution to wind up voluntarily [Rule 9]***

Where resolution been resolved and consent of creditors is received for voluntary winding up of the LLP, the LLP shall, within fourteen days of the receipt of creditors' consent, give notice of the resolution by advertisement in a newspaper circulating in the district where the registered office or the principal office of the LLP is situated.

- ***Appointment of LLP Liquidator [Rule 10]***

LLP, with consent of majority of partners through resolution (in case winding up initiated by partners), to appoint voluntary Liquidator as **LLP Liquidator**, within thirty days of:

- passing of resolution of voluntary winding (where LLP has no creditors) or
- filing of notice intimating the decision of winding up (where it has creditors)



The LLP Liquidator, after his appointment, shall file a declaration in the **Form No. 6** disclosing conflict of interest or lack of independence in respect of his appointment, if any, with the LLP or the creditors, as the case may be.

- ***Notice of appointment of LLP Liquidator to be given to Registrar [Rule 12]***

The LLP shall give notice to the Registrar of the appointment of the LLP Liquidator indicating the name and particulars of that LLP Liquidator, within ten days of such appointment or change in **Form No. 7**.

- ***Designated partner's and other partner's power to cease on appointment of LLP Liquidator [Rule 13]***

On the appointment of a LLP Liquidator, all the powers of the designated partner and other partner, if any, shall cease, except for the purpose of giving notice of such appointment of the LLP Liquidator to the Registrar.

- ***Appointment of committees [Rule 16]***

The partners or the creditors may appoint such committees to supervise the voluntary winding up and assist the LLP Liquidator in discharging his functions.

- **LLP Liquidator to submit report on progress of winding up [Rule 17]**

The LLP Liquidator shall report quarterly (quarters ending on 31st March, 30th June, 30th September and 31st December) on the progress of winding up of the LLP in **Form No. 8** to the partners or creditors, which shall be made before the end of the following quarter.

- **Dissolution of LLP [Rule 19]**

As the affairs of a LLP are fully wound up, the LLP Liquidator shall prepare a report stating the manner of conduct of winding up, property has been disposed off, its debts fully discharged, final winding up accounts and explanations, in the **Form No 9**.



Seek approval of two-thirds of total number of partners or two thirds in value of creditors of the LLP on the said report and the final winding up accounts and explanations.



Pass resolution for winding up within thirty days of receipt of such report, for its dissolution in the case of meeting or within thirty days of receipt of circulation or further information, whichever is later, in the case of circulation.



Within fifteen days after the resolution has been passed, the LLP liquidator shall:

- (a) send to the Registrar a copy of the final winding up accounts, explanation and report in **Form No. 10**; and
- (b) file an application with the Tribunal alongwith a copy of the final winding up accounts, explanations and report, for passing an order of dissolution of the LLP.



On satisfaction of Tribunal, it may pass an order, within sixty days of the receipt of such application, accounts, explanations and report, that the LLP shall stand dissolved.



The LLP Liquidator shall file a copy of the order under with the Registrar within thirty days in **Form No. 11**.



The Registrar, on receiving the copy of the order passed by the Tribunal, shall publish a notice in the Official Gazette that the LLP stands dissolved.

3. Who shall initiate voluntary winding up?

As per sub-rule (3) of Rule 8 of the LLP Winding up Rules, where two-thirds in value of creditors of the LLP give their consent, the winding up shall be initiated by the following—

- (a) ***the LLP shall be wound up voluntarily by partners***- it is in the interest of all the partners and creditors that the LLP be wound up voluntarily by partners;; or
- (b) ***the LLP shall be wound up voluntarily by creditors***- the LLP will not be able to pay for its debts in full from the proceeds of assets to be sold in voluntary winding up and propose that the LLP be wound up voluntarily by creditors;; or
- (c) ***the LLP is wound up by the Tribunal***- the LLP will not be able to pay for its debts in full from the proceeds of assets to be sold in voluntary winding up and propose that it will be in the interest of all partners and creditors,

The LLP shall, within fourteen days thereafter, file an application before the Tribunal for winding up.

Exception: Where the LLP pays the dues of creditors to their satisfaction, provisions of clause (b) or clause (c), as the case may be, shall not be applicable.

4. What shall be the majority criteria for appointment of LLP Liquidator in case the LLP is voluntarily wound up by the creditors or the Tribunal?

As per sub-rule (2) of Rule 10 of the LLP Winding up Rules, where the creditors have given consent that voluntary winding up shall be wound up by creditors or partners, the appointment of LLP Liquidator shall be effective only after it is approved by two-thirds of the creditors in value of the LLP.

5. What shall happen in case the LLP Liquidator appointed by the partners is not approved by the creditors?

As per Proviso to sub-rule (2) of Rule 10 of the LLP Winding up Rules, where creditors do not approve the LLP Liquidator appointed by the partners of LLP, creditors shall appoint another LLP Liquidator, with two-thirds of the creditors in value of the LLP and fix the remuneration to be paid to the LLP Liquidator.

6. Who shall be LLP Liquidator if both partners and creditors nominate different LLP Liquidators?

As per sub-rule (3) of Rule 10 of the LLP Winding up Rules , if the creditors and the partners of the LLP nominate different LLP Liquidators, the LLP Liquidator nominated by creditors shall be the LLP Liquidator

Where the creditors neither approve the LLP Liquidator nominated by the partners of the LLP nor nominate any other LLP Liquidator, the LLP Liquidator nominated by the partners of the LLP shall be the LLP Liquidator.

7. How a LLP Liquidator removed?

As per Rule 10 of the LLP Winding up Rules, a LLP Liquidator can be removed by the following:

- **Tribunal:** The Tribunal may remove a LLP liquidator on an application made by the Registrar.
- **Partners:** A LLP Liquidator may be removed by the partners of the LLP where his appointment has been made by the LLP and,
- **Creditors:** A LLP Liquidator may be removed by the creditors, where his appointment is approved, or made, by such creditors.

8. In what circumstances shall the LLP Liquidator vacate the office?

The LLP shall remove the LLP Liquidator and he shall vacate his office in the following circumstances:

- Where a LLP Liquidator is sought to be removed, he shall be given a notice in writing stating the grounds of removal from his office by the LLP or the creditors, as the case may be.
- Where three-fourths of total number of partners of the LLP or three-fourths of creditors in value, as the case may be, after consideration of the reply, if any, filed by the LLP Liquidator, in their meeting decide to remove the LLP Liquidator.

9. What are the duties of a LLP Liquidator?

As per Rule 14 of the LLP Winding up Rules, the LLP Liquidator shall perform such functions and discharge such duties as are determined from time to time by the LLP or its creditors:

- (a) Settle the list of creditors or partners, which shall be prima facie evidence of the liability of the persons named therein to be creditors or partners.
- (b) Obtain approval of partners or creditors of LLP, as the case may be, for any purpose he may consider necessary.

- (c) Maintain regular and proper books of accounts in the form and manner as specified in Part VI and the partners or the creditors or any officer authorized by the Central Government may inspect such books of accounts.
- (d) Pay the debts of the LLP and shall adjust the rights of the partners among themselves.
- (e) Observe due care and diligence in the discharge of his duties.

10. What shall be done if the LLP is not fully wound up within one year from the date of commencement of voluntary winding up?

As per sub-rule (7) of Rule 19 of the LLP Winding up Rules, in the event affairs of the LLP are not fully wound up within a period of one year from the date of commencement of voluntary winding up, LLP Liquidator shall file an application before the Tribunal explaining the reasons thereof and seek appropriate directions.

11. How a LLP confers the authority to a LLP Liquidator in respect of for sale of property of LLP?

As per sub-rule (1) of Rule 20 of the LLP Winding up Rules, where a limited liability partnership (***the transferor LLP***) is proposed or is in the course of being wound up voluntarily and the whole or any part of its business or property is proposed to be transferred or sold to any other limited liability partnership (***the transferee LLP***), the transferor LLP, with a resolution passed by at least three-fourths of total number of partners, confers on LLP liquidator a general authority or an authority in respect of a particular arrangement, wherein the LLP Liquidator of the transferor LLP may, -

- (a) receive, by way of compensation wholly or in part for the transfer or sale, cash, securities, policies, or other like interests in the transferee LLP, for distribution among the partners of the transferor LLP; or
- (b) enter into any other arrangement whereby the partners of the transferor LLP may, in lieu of receiving cash, securities, policies or other like interest or in addition thereto, participate in the profits of, or receive any other benefit from, the transferee LLP.

Note: *No such arrangement shall be entered into without the consent of the secured creditors, if any.*

12. How a partner, against the resolution of any arrangement with LLP Liquidator, in respect of for sale of property of LLP, compensated?

As per sub-rule (3) of Rule 20 of the LLP Winding up Rules, any partner of the transferor LLP who is against resolution conferring LLP Liquidator the authority in respect of sale of property and who has expressed his dissent in writing addressed

to the LLP Liquidator and left at the registered office of the LLP within seven days after the passing of the resolution, may require the LLP Liquidator to purchase his interest at a price to be determined in accordance with the agreement or by the registered valuer.

As per sub-rule (4) of Rule 20, if the LLP Liquidator decides to purchase such partner's interest, the purchase money, raised by him in such manner as may be determined by a resolution passed by three-fourths of total number of partners, shall be paid before the LLP is dissolved.

13. How is the property of the LLP distributed in the event of winding up?

As per Rule 21 of the LLP Winding up Rules, in respect of overriding preferential payments, the assets of a LLP shall, on its winding up, be applied in satisfaction of its liabilities *pari passu*, and subject to such application, shall unless the LLP Agreement otherwise provides, be distributed among the partners according to their rights and interests in the LLP.

14. What is the position of arrangements entered between a LLP and its creditors in the event of winding up?

As per Rule 21 of the LLP Winding up Rules, any arrangement entered into between a LLP and its creditors in the event of winding up, by three-fourths of the total number of partners of LLP, shall be binding on the LLP and creditors.

Note: The arrangement shall be binding only after:

- The said arrangement is presented before the Tribunal within twenty one days from the date of approval by the LLP and the creditors.
- It is approved by the Tribunal.

15. In which circumstances a LLP Liquidator or any partner or creditor may apply to the Tribunal?

As per Rule 23 of the LLP Winding up Rules, the LLP Liquidator or any partner or creditor may apply to the Tribunal in the follow—

- i. to determine any question arising in the course of the winding up of a LLP;
or
- ii. to exercise as respects the enforcing, the staying of proceedings or any other matter, all or any of the powers which the Tribunal might exercise, if the LLP were being wound up by the Tribunal.
- iii. for an order setting aside any attachment, distress or execution put into force against the estate or effects of the LLP after the commencement of the winding up.

16. Who shall bear the costs of voluntary winding up?

As per Rule 24 of the LLP Winding up Rules, all costs, charges and expenses properly incurred in the winding up, including the fee of the LLP Liquidator, shall, subject to the rights of secured creditors, if any, and workmen, be payable out of the assets of the LLP in priority to all other claims.

SECTION C- COMPULSORY WINDING UP**1. Under which circumstances limited liability partnership may be wound up by Tribunal?**

As per Section 64 of the Act, a limited liability partnership may be compulsorily wound up by the Tribunal, –

- if the LLP decides that LLP be wound up by the Tribunal;
- if, for a period of more than six months, the number of partners of the 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; or
- if the Tribunal is of the opinion that it is just and equitable that the LLP be wound up.

2. Who shall file the petition for winding up?

As per Rule 26 of the LLP Winding up Rules, an application to the Tribunal for the winding up of a LLP shall be by a petition presented by–

- (a) the LLP or any of its partner or partners,
- (b) any secured creditor or creditors, including any contingent or prospective creditor or creditors,
- (c) the Registrar, or
- (d) any person authorised by the Central Government in that behalf,
- (e) the Central Government, in a case falling under section 51 of the Act,
- (f) the Central Government or a State Government, in a case falling under clause (d) of section 64.

3. Only in which circumstances the petition filed by a LLP be admitted?

As per sub-rule (4) of Rule 26 of the LLP Winding up Rules, a petition filed by the LLP or any of its partner or partners for winding up before the Tribunal shall be admitted only if accompanied by:

- a statement of affairs of the LLP on the date of petition
- a resolution of three-fourths of total number of partners in form i.e., **Form No. 16** and manner specified in Part VI of the Limited Liability Partnership (Winding up and Dissolution) Rules, 2012.

4. What orders can Tribunal make after hearing the petition of winding up?

As per Rule 27 of the LLP Winding up Rules, on hearing a winding up petition, the Tribunal may –

- (a) dismiss it, with or without costs;
- (b) make any interim order, as it thinks fit;
- (c) direct the action for revival or rehabilitation of the limited liability partnership in accordance with procedure laid down in sections 60 to 62 of the Limited Liability Partnership Act, 2008;
- (d) appoint a “Liquidator” as provisional liquidator of the limited liability partnership till the making of a winding up order;
- (e) make an order for the winding up of the limited liability partnership with or without costs; or
- (f) any other orders or orders as may be considered fit.

5. How is the statement of affairs filed by a LLP undergoing compulsory winding up?

As per sub-rule (3) of Rule 28 of the LLP Winding up Rules, where the Tribunal has made a winding up order or appointed the Liquidator as provisional liquidator, unless the Tribunal in its direction otherwise orders, there shall be made out and filed with the Liquidator a Statement as to affairs of the LLP in the form and the manner as specified in Part VI, within twenty-one days from relevant date or within such extended time not exceeding two months (including the period of twenty-one days) as the Liquidator or the Provisional Liquidator or the Tribunal may for special reasons extend.

6. What is the meaning of relevant date?

As per Explanation to sub-rule (3) of Rule 28 of the LLP Winding up Rules, the expression “**relevant date**” means the following:

- ***In a case where a Provisional Liquidator is appointed***, the date of his appointment.
- ***In a case where no such appointment is made***, the date of the winding up order.

7. How is the Liquidator appointed in case of winding up by the Tribunal?

PROCEDURE OF APPOINTMENT OF LIQUIDATOR IN CASE OF WINDING UP BY THE TRIBUNAL [RULE 29]:

In the case of winding up of a LLP by the Tribunal or for the appointment of a Provisional Liquidator-

- There shall be a 'Liquidator' who may be either an 'Official Liquidator' or a Liquidator appointed by an order of the Tribunal from the panel maintained by the Central Government.
- In the absence of order, the Official Liquidator shall become or act as 'Liquidator' or 'Provisional Liquidator', as the case may be.
- Every Liquidator appointed from the panel, shall, before entering upon his duties as a Liquidator of the LLP for which he is appointed, furnish security of such sum and in such manner as the Tribunal may direct.
- The cost of furnishing the required security shall be borne by the Liquidator and shall not be charged against the assets of the LLP as an expense incurred in the winding up.
- If the Tribunal is of the opinion that the security furnished by the Liquidator is inadequate, the Tribunal may require the Liquidator to furnish additional security.
- Where the security furnished is excessive, the Liquidator may apply to the Tribunal for reducing the amount of security, and the Tribunal may make such order thereon as it thinks fit.
- The terms and conditions of appointment of a liquidator from panel and the fee payable to him shall be specified by the Tribunal on the basis of task required to be performed, experience, qualification and size of the LLP.
- On appointment as Provisional Liquidator or Liquidator from panel, such liquidator shall file a declaration in the **Form No. 6** disclosing conflict of interest or lack of independence in respect of his appointment, if any, with the Tribunal and such obligation shall continue throughout the term of his or its appointment.

- A Liquidator shall be described by the style of **“The Liquidator”** of the particular LLP in respect of which he acts and not by his or its name.

8. On what grounds a liquidator can be removed?

As per Rule 30 of the LLP Winding up Rules, the Tribunal may, on reasonable causes and reasons recorded in writing, remove the Provisional Liquidator or the Liquidator, appointed from the panel, on any of the following grounds, namely:-

- (a) misconduct,
- (b) fraud or misfeasance,
- (c) professional incompetence or failure to exercise due care and diligence in performance of the powers and functions;
- (d) inability to act as liquidator,
- (e) conflict of interest or lack of independence during the term of his appointment.

9. How the winding up order shall be communicated to the Registrar or the Liquidator?

As per Rule 31 of the LLP Winding up Rules, the winding up order shall be communicated to the Registrar as follows:

- Where the Tribunal makes winding up order of a LLP, it shall cause intimation thereof to be sent to the Liquidator and the Registrar in **Form No. 12** within a period not exceeding fifteen days from the date of passing of the order.
- On the making of a winding up order, it shall be the duty of the petitioner in the winding up proceedings and of the LLP to file with the Registrar a certified copy of the order within fifteen days of the making of the order.

10. What shall be the course of action after the winding up order by the Tribunal is communicated to the Registrar or the Liquidator?

As per sub-rule (3) and (4) of Rule 31 of the LLP Winding up Rules, once the winding up order is communicated to the Registrar or the Liquidator, they shall proceed as follows:

- The Registrar on receipt of the intimation shall make an endorsement to that effect in his records relating to the LLP and notify in the Official Gazette that such an order has been made.
- On receipt of the intimation, Liquidator shall send a notice to the registered office of the LLP by registered post and serve notice to the partners,

designated partners, officers, employees including Chief Executive Officer, Chief Finance Officer and auditors and secured creditors, if any, within fifteen days of the receipt of the intimation, for the purpose of custody of the property, assets, effects, actionable claims, books of accounts or other documents.

11. What information shall be contained in the report of Liquidator?

As per Rule 34 of the LLP Winding up Rules, where the Tribunal has made a winding up order, the Liquidator shall, within sixty days from the date of winding up order, submit to the Tribunal, a report containing the following particulars, namely:-

- (a) the nature and details of the assets of the LLP including their location and value, stating separately the cash balance in hand and in the bank, if any, and the marketable securities, if any, held by the LLP;
- (b) amount of contribution received and outstanding from partners;
- (c) the existing and contingent liabilities of the LLP including names, addresses and occupations of its creditors, stating separately the amount of secured and unsecured debts, and in the case of secured debts, particulars of the securities given, whether by the LLP or a partner or an officer thereof, their value and the dates on which they were given;
- (d) the debts due to the LLP and the names, addresses and occupations of the persons from whom they are due and the amount likely to be realised on account thereof;
- (e) guarantees, if any, given by the LLP;
- (f) list of partners and dues if any payable by them and details of any outstanding contributions;
- (g) details of intangible assets such as trade marks, intellectual property rights etc. owned by the LLP;
- (h) details of subsisting contracts, joint ventures and collaborations, if any;
 - (i) details of other LLPs or companies, etc. in which LLP has any stake;
 - (j) details of legal cases filed by or against the LLP;
- (k) details of the properties, assets, books of records and other documents taken under the custody of the Liquidator.
- (l) scheme of revival or rehabilitation of LLP, if any, and

- (m) any other information which the Tribunal may direct or the Liquidator may consider necessary to include.

The Liquidator may include in his report the manner in which the LLP was promoted or formed and whether in his opinion any fraud has been committed by any person in its promotion or formation or by any officer of the LLP in relation to the LLP since the formation thereof and any other matter, which in his opinion, it is desirable to bring to the notice of Tribunal.

The Liquidator may make, in the report, the viability of the business of the LLP, or the steps which are necessary for maximising the value of assets of the LLP.

12. How the assets shall be applied for of costs?

As per Rule 38 of the LLP Winding up Rules, assets of the LLP shall be applied in the following order:

- Payment of the cost including expenses, charges or fees and remuneration of the Liquidator incurred in the winding up of LLP; and then
- Discharge of its liabilities pari passu as per the Act and rules.

13. Who shall support the Liquidator in the inspection?

As per Rule 39 of the LLP Winding up Rules, the Tribunal may, at the time of making an order for the winding up of a LLP or at any time thereafter, direct that there shall be appointed a committee of inspection to act with the liquidator.

Thus, the Committee of Inspection shall support the Liquidator.

14. How the progress of the winding up procedures reported to the Tribunal by the Liquidator?

As per Rule 40 of the LLP Winding up Rules, the Liquidator shall report quarterly (quarters ending on 31st March, 30th June, 30th September and 31st December) on the progress of winding up of the LLP in **Form No. 13** to the Tribunal, which shall be made before the end of the following quarter.

15. What are the duties of the Liquidator?

As per Rule 41 of the LLP Winding up Rules, the Liquidator performs the following duties:

- (a) to carry on the business of LLP for its beneficial winding up;
- (b) to do acts and execute, in the name of the LLP, all deeds, receipts, and other documents, and use the LLP's seal, if necessary;
- (c) to take custody of property, assets, actionable claims, books of accounts and other documents;

- (d) to sell the immovable and movable property including intangible assets such as intellectual property rights, trademarks, logo, etc. and actionable claims of the LLP by public auction or inviting bids or tenders or private contracts with power to transfer such property to any person or body corporate, or to realize any debts;
- (e) to inspect the records and returns of the LLP on the files of the Registrar or any other authority;
- (f) to prove rank and claim in the insolvency of any partner for any balance against his estate, and to receive distributable sums in the insolvency, in respect of that balance, as a separate debt due from the insolvent, and rateably with the other separate creditors;
- (g) to draw, accept, make and endorse any bill of exchange, hundi or promissory note in the name and on behalf of the LLP, with the same effect with respect to the liability of the LLP as if the bill, hundi, or note had been drawn, accepted, made or endorsed by or on behalf of the LLP in the course of its business;
- (h) to take out, in his official name, letters of administration to any deceased partner, and to do in his official name any other act necessary for obtaining payment of any money due from a partner or his estate which cannot be conveniently done in the name of the LLP, and in all such cases, the money due shall, for the purpose of enabling the Liquidator to take out the letters of administration or recover the money, be deemed to be due to the Liquidator himself;
- (i) to apply to the Tribunal for its orders or directions;
- (j) to appoint security guards or security agency from the panel maintained by the Liquidator, to protect the property and assets, in consultation with secured creditors or after giving them notice;
- (k) to make out an inventory of the assets, books and records either by the Liquidator himself or by the panel of experts maintained by the Liquidator, in consultation with secured creditors or after giving them notice;
- (l) to appoint valuers including chartered surveyors or chartered accountants, from the panel maintained by the Liquidator to assess the value of the LLP's assets within fifteen days after taking into custody of property, assets and effects or actionable claims, in consultation with secured creditors or after giving them notice;

- (m) to give an advertisement, inviting bids for sale of the assets of the LLP, within fifteen days from the date of receiving valuation report ;
- (n) to apply to the Tribunal for an order directing any person who, in his opinion, is competent to furnish a statement of the affairs under rule 28 and such person shall be served a notice by the liquidator to submit and verify the statement of affairs by the LLP;
- (o) to carry out investigation into the affairs of the LLP relating to fraudulent conduct or business, misfeasance etc, either himself or by the Chartered Accountants appointed from the panel and submit report on such investigation to the Tribunal within one year from the date of the winding up order or within such extended time as may be granted by the Tribunal on an application by the Liquidator:

If in the opinion of the Liquidator no such investigation is required, the Liquidator shall submit a report to the Tribunal, explaining the reasons thereof, within one year from the date of winding up order;
- (p) to call any person for recording any statement for the purpose of investigating the affairs of the LLP being wound up;
- (q) to maintain a separate bank account for each LLP under his charge for depositing the sale proceeds of the assets and recovery of debts of each LLP;
- (r) to maintain proper books of account in respect of all receipts and payments made by him in respect of each LLP and submit statement of accounts to the Tribunal;
- (s) to invite claims from the creditors, examine the proof and prepare and submit the list of creditors and partners; and
- (t) to do all such other acts and things as may be necessary for the winding up of the LLP and distribution of its assets.

16. Who shall assist the Liquidator in the winding up procedures?

As per Rule 42 of the LLP Winding up Rules, the Liquidator may, with the sanction of the Tribunal, appoint one or more practicing chartered accountants or practicing company secretaries or practicing cost accountants or legal practitioners entitled to appear before the Tribunal or such other professionals or experts or valuer or agency as he considers necessary to assist him in the performance of his duties and functions.

Note: A person appointed for the Liquidator's assistance shall disclose any conflict of interest or lack of independence in respect of his appointment to the Tribunal in the **Form No. 14**.

17. How shall the debts due to the partners be paid?

As per Rule 46 of the LLP Winding up Rules, the partners, for the time being on the list of partners to pay, shall pay amount due to the LLP including outstanding or unrealized or unrecovered contribution, from him or from the estate of the person whom he represents, as per the order of the Tribunal and in the manner directed by that order.

SECTION D- PROVISIONS APPLICABLE TO EVERY MODE OF WINDING UP**1. What are the powers of a LLP Liquidator or Liquidator subject to sanction of the Tribunal or partners?**

As per Rule 51 of the LLP Winding up Rules, the LLP Liquidator or Liquidator may with the sanction of the following –

- (a) of the Tribunal, when the LLP is being wound up by the Tribunal; or
- (b) of a resolution by three-fourths of total number of partners of the LLP and prior approval of the Tribunal, in the case of a voluntary winding up, –

Exercise following powers:

- (i) pay any class of creditors in full;
- (ii) make any compromise or arrangement with creditors or persons claiming to be creditors or alleging themselves to have any claim against the LLP;
- (iii) compromise any money due from partners including outstanding, unrealized or unrecovered contribution, debt, and liability capable of resulting in a debt, and any claim and take any security for the discharge of any such debt, liability or claim, and give a complete discharge in respect thereof.

2. What shall be considered as the prima facie evidence in respect of the winding up procedures?

As per Rule 53 of the LLP Winding up Rules, all the books and papers of the LLP, LLP Liquidator and liquidator shall be prima facie evidence of the truth of all matters purporting to be recorded therein in respect of winding up.

3. How shall the Liquidator inform as to pending liquidations?

As per sub-rule (1) of Rule 56 of the LLP Winding up Rules, the LLP liquidator in the case of voluntary winding up and the liquidator in the case of winding up by Tribunal, shall during the tenure of his office prepare every year a statement of

accounts as on 31st March in **Form No. 15** within two months which shall be verified by a declaration.

Where the LLP Liquidator or liquidator has not received or paid any sum of money on account of the assets of the LLP during the period of account, he shall file an affidavit of no receipts or payments on the date on which he shall have to file his accounts for the period.

4. In which circumstances does the statement of accounts not required to be audited?

As per sub-rule (1) of Rule 56 of LLP Winding up Rules, the statement of accounts prepared by the LLP Liquidator or Liquidator need not be got audited by the Chartered Accountant where the value of total transactions during the period is for rupees fifty thousand or less.

5. How the statement of accounts filed with the Registrar?

As per sub-rule (2) of Rule 56 of the LLP Winding up Rules, a copy of the statement of accounts along with the Auditor's report shall be filed with the Registrar in every kind of winding up in **Form No. 10** not later than 30th September following year.

Note: 'Year' in relation to the statement of accounts means period from first day of April of a Year to the 31st day of March following year.

6. How the ascertainment of wishes takes place for creditors or partners?

As per Rule 61 of the LLP Winding up Rules, the Tribunal may direct meetings of the creditors or partners for ascertaining their wishes and appoint a person to act as chairman of such meeting and to report the result thereof to the Tribunal.

For the purpose of ascertaining the wishes of :

- (i) Creditors-** regard shall be given to the value of each creditor's debt.
- (ii) Partners-** regard shall be given to the value of each partner's contribution.

7. When can the Tribunal declare the dissolution of the LLP as void?

As per Rule 64 of the LLP Winding up Rules, where a LLP has been dissolved, on application by the LLP Liquidator or Liquidator of the LLP or by any other person who appears to the Tribunal to be interested, the Tribunal may at any time within two years of the date of the dissolution make an order declaring the dissolution to be void and thereupon such proceedings may be taken as if the LLP had not been dissolved.

Note: It shall be the duty of the person on whose application the order was made, within thirty days after the making of the order, to file a certified copy of the order with the Registrar in **Form No. 11** who shall register the same.

8. When commencement of winding up by the Tribunal takes place?

As per Rule 65 of the LLP Winding up Rules, the commencement of winding up by the Tribunal takes place as follows:

- (i) Where a resolution has been passed by the LLP for voluntary winding up before the presentation of a petition for the winding up of a LLP by the Tribunal-** the winding up of the LLP shall be deemed to have commenced at the time of the passing of the resolution, and unless the Tribunal, on proof of fraud or mistake, thinks fit to direct otherwise.
- (ii) In any other case-** the winding up of a LLP by the Tribunal shall be deemed to commence at the time of the presentation of the petition for the winding up.

SECTION E – GENERAL PROCEEDINGS AND PROCEDURES OF WINDING UP

1. What are the kinds of meetings held during the course of winding up?

As per Rule 168 of the LLP Winding up Rules, following meetings of creditors or partners are held in the course of winding up:

- **Tribunal Meetings-** meeting of creditors or partners which may be directed to be held by the Tribunal under rule 61 hereinafter referred to as 'Tribunal meetings'.
- **Liquidator's Meetings-** the Liquidator may, in a winding up by the Tribunal, as and when he thinks fit, summon and hold meetings of the creditors or partners, for the purpose of ascertaining their wishes, hereinafter referred to as 'Liquidator's meetings'.
- **Voluntary Liquidation Meetings-** In a voluntary winding up, the LLP liquidator may himself summon to hold and conduct meetings of creditors for the purpose of ascertaining their wishes in all matters relating to the winding up. Such meetings and all meetings of creditors which a LLP or a LLP liquidator is by the Act or the rules required to convene in or immediately before such a voluntary winding up and all meetings convened by a creditor in a voluntary winding up under the rules are hereinafter called 'voluntary liquidation meeting'.

2. Can a creditor or partner vote by proxy?

As per Rule 191 of the LLP Winding up Rules, a creditor or partner may vote either in person or by proxy.

Where a person is authorised to represent a body corporate, such person shall produce a copy of the resolution so authorizing him to the following:

- **Liquidator**- at any meeting of creditors or partners
- **LLP liquidator**- in the case of meetings after the winding up of the LLP
- **Chairman of the meeting**- in any other meeting the

Note: Such copy must be certified to be a true copy by a director, the manager, the secretary or designated partner or other officer of the body corporate duly authorised in that behalf, who shall certify that he is so authorised.

3. What form of proxies can be given to a person?

As per Rule 192 of the LLP Winding up Rules, a creditor or partner may give a general proxy in **Form No. 61** or a special proxy in **Form No. 61A** to any person.

4. In which case a holder of proxy cannot vote?

As per Rule 197 of the LLP Winding up Rules, no person acting either under a general or special proxy, shall vote in favour of any resolution which would directly or indirectly place himself, his partner or employer in a position to receive any remuneration out of the assets of the LLP otherwise than as a creditor ratably with the other creditors of the LLP.

5. Can a minor be appointed as a proxy?

As per Rule 198 of the LLP Winding up Rules, no minor person shall be appointed as a general or special proxy.

6. What remedy is available to the person aggrieved by the order of Tribunal?

As per Rule 301 of the LLP Winding up Rules, any person aggrieved against the order or decision of the Tribunal, may prefer an appeal to the National Company Law Appellate Tribunal within a period of forty-five days from the date on which the copy of the order is delivered in such manner as may be provided by that Appellate Tribunal.

7. What is the procedure of termination of winding up?

PROCEDURE OF TERMINATION OF WINDING UP

- **Liquidator to apply for dissolution [Rule 246]**

As soon the affairs of the LLP have been fully wound up, in a winding-up by the Tribunal, the Liquidator shall file his final account with the Tribunal in **Form No.89** and apply for orders as to the dissolution of the LLP



The application's hearing shall be done after the following:

- Completion of the audit of the final accounts, and
- Filing of the auditor's certificate in relation thereto, and

Note: If affairs of the LLP have not been wound up within one year from the date of the winding up order, the liquidator shall file an application before the Tribunal explaining the reasons and seek appropriate directions.

- **Dissolution of the LLP [Rule 247]**

Upon hearing the application, the Liquidator and any other person to whom notice may have been ordered by the Tribunal, checking the account as audited, the Tribunal may make such orders:

- the dissolution of the LLP,
- the application of the balance in the hands of the Liquidator,
- the payment into the LLPs Liquidation Account in the public account of India, and
- the disposal of the books and papers of the LLP and of the Liquidator.

- **Liquidator to pay the balance into public account [Rule 248]**

Upon order for dissolution, the Liquidator shall pay into the LLPs Liquidation Account in the public account of India:

- any unclaimed or unpaid distributable sum payable to creditors or undistributed, or
- unpaid assets refundable to partners in his hands on the date of the order of dissolution, and

- other balances in his hands as he has been directed by the Tribunal to deposit into the LLPs Liquidation Account.



A copy of the order of dissolution shall, within thirty days from the date thereof, be forwarded by the Liquidator to the Registrar in **Form No. 11**, along with a statement signed by the Liquidator that the directions of the Tribunal regarding the application of the balance as per his final account have been duly complied with.



Liquidator shall make in his books a minute of the dissolution

- **Conclusion of winding up [Rule 249]**

The winding up of a LLP shall be deemed to be concluded, in the following cases –

(a) a LLP wound up by order of the Tribunal, at the date on which the order dissolving the LLP has been reported by the Liquidator to the Registrar;

(b) a LLP wound up voluntarily, at the date of the dissolution of the LLP,

Exception: the winding up shall not be deemed to be concluded until unclaimed or undistributed funds or assets in the hands or under the control of the LLP Liquidator, or any person who has acted as Liquidator, have either been distributed or paid into the LLP Liquidation Account.

- **Application to declare dissolution void [Rule 250]**

An application shall be made upon notice to the Central Government and the Registrar. Where the Tribunal declares the dissolution to have been void, the applicant shall file a certified copy of the order with the Registrar not later than thirty days from the date of the order.

SECTION F- VOLUNTARY LIQUIDATION

1. Voluntary Liquidation of a LLP is governed under which law?

Voluntary Liquidation of a LLP is governed under the Insolvency and Bankruptcy Code, 2016 and Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017.

Under the Section 3(7) of the Code, the definition of a **“Corporate Person”** includes

a limited liability partnership as defined in clause (n) of sub-section (1) of section 2 of the Limited Liability Partnership Act, 2009.

2. What are the conditions necessary for the initiation for Voluntary Liquidation as per the Insolvency and Bankruptcy Code, 2016?

As per Regulation 3 of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017, following conditions are necessary for the initiation of the voluntary liquidation:

Conditions for initiation:

The corporate person registered as a company shall meet the following conditions to institute voluntary liquidation:

- It has not committed any default.
- A declaration from majority of designated partners of the LLP verified by an affidavit that-
 - i) they have made full enquiry into the affairs of the company and have formed an opinion that either the company has no debt or that it will pay its debt in full from the proceeds of assets to be sold in the voluntary liquidation; and
 - ii) liquidation is not initiated to defraud any person
- The declaration must be accompanied with:
 - i. Audited financial statement and record of business operations of the LLP for previous two years or period since its incorporation.
 - ii. Report of valuation of the assets of the corporate person, if any, prepared by a registered valuer.
- Within 4 weeks of declaration, there shall be:
 - i) a resolution passed by a special majority of the partners or contributories, as the case may be, of the corporate person requiring the corporate person to be liquidated and appointing an insolvency professional as liquidator; or
 - ii) a resolution of the partners or contributories, as the case may be, requiring the corporate person to be liquidated as a result of expiry of the period of its duration, if any, fixed by its constitutional documents or on occurrence of any event in respect of which the constitutional documents provide that the corporate person shall be dissolved, as the case may be, and appointing an insolvency professional to act as the liquidator.

- If the corporate person owes any debt to any person, creditors representing two-thirds in value of debt of the corporate person shall approve the abovementioned resolution within 7 days such resolution.

3. What shall be the commencement date of voluntary liquidation?

The voluntary liquidation shall be deemed to have commenced from the date of passing of the resolution in the meeting of the partners or contributories of the LLP.

4. List the procedure of Voluntary Liquidation in brief.

Voluntary Liquidation Process in brief:

- Appointment of liquidator
- Formation of liquidation estate
- Public Announcement and verification/admission/rejection of claims
- Consolidation of claims
- Distribution of assets
- Dissolution of corporate debtor (to be completed within 12 months)