

BUSINESS LAW

UNIT 5: The Limited Liability Partnership Act, 2008

TOPIC- INCORPORATION PROCESS OF LLP

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INCORPORATION PROCESS OF LLP

- Two or more persons who intend to carry a lawful business with a view to make profit can come together to associate as an LLP. A minimum of two persons (individuals or nominees of body corporates) need to be selected as designated partners ,to carry out all legal and procedural compliances ,of which atleast one should be resident in India i.e. **stayed in India for ≥ 120 days during the financial year.**
- To begin with, these persons should choose a desirable name for the LLP and find out its availability using free search facility available on MCA portal
- Then application for the reservation of the proposed name shall be made through web-service RUN-LLP (which stands for Reserve Unique Name for LLP). Maximum two proposed names, in preference order, can be suggested in it which may be approved or rejected by the registrar. Incase of rejection of both the names, the registrar allows 15 days for resubmission of two more names. Once the name is approved, it is reserved for a certain period(90 days) and should be filled in as the name of the proposed LLP while applying for the incorporation of the LLP.
- Form FiLLiP(Form for Incorporating Limited Liability Partnership) is the form to be used for incorporating an LLP. This is an integrated form i.e. application for incorporation of LLP, application for allotment of DPIN(Designated Partner Identification Number) and application for reservation of the proposed name of LLP can all be made together in the same form. NOTE- The **application for allotment of DPIN can not be made by more than five individuals in Form FiLLiP.** Also application for reservation of name of LLP can be made through FiLLiP if not already made through web-service RUN. But in this case ,**only one proposed name is allowed.**
- This FiLLiP form comprises of Incorporation Document in Part A and Subscribers Statement in Part B. The Incorporation Document shall contain correct information about the Name of LLP, its proposed business, its registered office address, the details of partners and designated partners and other relevant information such as information specific to TAN and PAN etc. . It is a public document and open to inspection on payment of prescribed fee. Part B of the FiLLiP form contains Subscribers Statement which contains the consent of persons to act as partners or designated partners and is attested by them through the Digital Signatures and also certified by the practising professional(CA/CS/CWA) that all the procedural and legal requirements of incorporation have been complied with.

INCORPORATION PROCESS OF LLP

- FiLLiP Form will then be filed with the Registrar having jurisdiction over the state in which the registered office of the LLP is to be situated along with the prescribed fees and Proof of address of registered office etc. **Geo tagging of Registered Office address –by adding longitude and latitude numbers is now mandatory . Jurisdiction of Police station is also to be specified.** LLP Agreement can be filed later after incorporation but within 30 days .
- The FiLLiP form will be processed by the Registrar.If there are deficiencies in the form, he shall intimate the applicant and allow him to remove the defects and resubmit the form within 15 days from the date of intimation. If on resubmission also, it is found that form is defective or incomplete, he shall give one more final opportunity to remove such deficiencies. The total period for resubmission of documents shall not exceed 30 days.
- But if the Registrar on examination, finds everything in order, he will approve the registration and issue Certificate of Incorporation in Form 16. The COI will contain the **name of the LLP**, the **date of its incorporation**, the **Limited Liability Identification Number (LLPIN)** . **It shall also mention PAN and TAN issued by Income Tax Department.** The COI shall be conclusive evidence that the LLP has been duly registered.
- On obtaining COI, LLP becomes a body corporate, having separate legal entity and perpetual succession and will be able to
 - ✓ sue and be sued in its own name
 - ✓ acquire, own, hold, sell etc. property in its own name
 - ✓ have a common seal , if it decides to have it
 - ✓ do such things and acts as other bodies corporate may lawfully do.
- LLP Agreement- It lays down the mutual rights and duties of the partners and their rights and duties vis-a- vis LLP. LLP agreement is mandatory for all the LLPs to avoid disputes in future. Where no specific LLP Agreement is executed or when it is there but silent on certain issues, then the provisions of First Schedule of the LLP Act,2008 shall apply . The LLP Agreement and any changes therein must be filed with the Registrar within 30 days of incorporation or the date of change. The LLP Agreement is not open to public inspection. LLP Agreement contains clauses on name, address and email ID of LLP; Jurisdiction of police station; proposed business; name and addresses of partners and designated Partners; form of contribution; profit sharing ratio; remuneration of partners; interest on contributions; rights & duties of partners on admission, resignation, retirement, cessation, expulsion etc .LLP agreement must be stamped, digitally signed by designated partner and certified by a practicing CA/CS/CWA .

PROVISIONS RELATING TO NAME OF LLP	PROVISIONS RELATING TO CHANGE IN NAME OF LLP
<ul style="list-style-type: none"> • Every LLP shall have the words ‘limited liability partnership’ or acronym ‘LLP’ as last words of its name • The name chosen must not be undesirable in the opinion of the Central Government i.e. ✓ The name chosen must not resemble or be identical to name of any other existing firm/ company/ trademark ✓ Name should not contain words prohibited under Emblems and Names Act, 1950 eg. name suggesting patronage of govt. /UNO / WHO etc. ✓ Name should not contain approval based words like mutual fund, stock exchange ,bank as these words can be used only after obtaining required approval from concerned authority. • Incase any person improperly uses the words ‘limited liability partnership’ or LLP without being incorporated as LLP, he shall be subject to prescribed penalty . • Every LLP is required to publish on its invoices, official correspondences , publications etc. its name as well as its registered address, registration number and a statement that it is registered with limited liability. 	<ul style="list-style-type: none"> • Voluntary change of Name of LLP- When an LLP voluntarily wants to change its name, it should follow the procedure provided in the LLP Agreement and if LLP Agreement is silent, then it can change its name by obtaining the consent of all its partners. The notice of change of name must be filed with the Registrar within 30 days of date of change along with fees. The Registrar will then issue a fresh COI bearing the new name. • Rectification of Name of LLP as per the direction of the Central Govt- If through inadvertence or otherwise an LLP got registered by a name which is too identical or similar to the name of any other LLP/ Company /registered trade mark of a proprietor, then on application of such LLP/ Company / trademark proprietor, the CG may issue direction to such LLP to change its name within 3 months of the date of direction. The application from the complaining trademark proprietor shall be maintainable only if it is made within a period of 3 years from the date of incorporation of the LLP. • Compliance of CG direction-Such an LLP shall comply with the direction of CG and accordingly change its name. It shall also give notice of change to the ROC along with order of CG within 15 days. The Registrar will then carry out necessary changes in the COI . • Non compliance of CG direction- If such an LLP does not comply with the above direction, CG shall allot new name to the LLP until it changes its name subsequently. The new name shall be- ORDNC(Order of Regional Director Not Complied), year of passing of direction , the serial no. and the existing LLPIN and it shall be mentioned on all official documents of LLP till it changes its name.
<p>Monika Arya, Associate Professor, Bharati College , Delhi University</p>	

REGISTERED OFFICE OF LLP AND CHANGE THEREIN

PROVISIONS RELATED TO REGISTERED OFFICE OF LLP	PROVISIONS RELATING TO CHANGE THEREIN
<ul style="list-style-type: none"> • Every LLP shall have a registered office (RO) to which all communications and notices may be sent. • The LLP may, in addition to the RO address, declare any other address as its address for service of documents in the manner as laid down in the LLP agreement or otherwise with the consent of all the partners. • A document may be served on the LLP/ partner/designated partner by sending by post/registered post/ courier/ e transmission etc. • Proof of address of registered office has to be submitted at the time of incorporation of the LLP. (Now geo-tagging of office address is mandatory and jurisdiction of Police Station is also to be specified) 	<ul style="list-style-type: none"> • Change of registered office from one place to another within same State- <ul style="list-style-type: none"> ✓ follow the procedure provided in LLP Agreement or obtain the consent of all partners , if LLP Agreement is silent. • Change of RO within same State from jurisdiction of one ROC to another - <ul style="list-style-type: none"> ✓ follow the procedure provided in LLP Agreement or obtain the consent of all partners , if LLP Agreement is silent. ✓ LLP shall file notice of change with the Registrar from where the LLP is shifting and a copy thereof must also be filed to the new Registrar for his information. This situation can happen in Maharashtra and Tamil Nadu where there are 2 Registrars each . • Change of RO from one State to another State- <ul style="list-style-type: none"> ✓ follow the procedure provided in LLP Agreement or obtain the consent of all partners , if LLP Agreement is silent. ✓ obtain consent of secured creditors ✓ publish a public notice about the proposed change in 2 newspapers ,one in English and one in local language ,21 days before filing notice of change with the registrar ✓ LLP shall file notice of change with the Registrar from where the LLP is shifting and a copy thereof must also be filed to the new Registrar for his information. • An LLP shall file notice of the change in Registered Office with the Registrar within 30 days of complying with the procedural requirements and after paying requisite fees. The change shall take effect only after such filing. <p style="text-align: center;">Monika Arya, Associate Professor, Bharati College , Delhi University</p>