



## The Big Picture: Limited Liability Partnership (Amendment) Bill, 2021

### Context:

- The Limited Liability Partnership (Amendment) Bill, 2021 was **passed in Parliament**.
- It seeks to **amend the Limited Liability Partnership Act, 2008**.
- The Act provides for regulation of limited liability partnerships (LLP).
- This is the **first time that changes are being made to the Act**.

### Aim:

- It **seeks to encourage the start-up ecosystem and further boost the ease of doing business**.
- It seeks to **decriminalise 12 offences** under the law-criminal offences will be brought down while ease of doing business will go up and partners will have more flexibility.
- It will also amend certain sections of the Act so as to **convert offences into civil defaults and to convert the nature of punishment provided in the said sections from fines to monetary penalties**.
- It seeks to **reduce the total number of penal provisions** under the LLP Act.

### Key features of the Amendment Act include:

- **Certain offences decriminalised:** The 2008 Act specifies the manner of operations of LLPs, and provides that violating these requirements will be punishable. The Amendment Act decriminalises these provisions and imposes a monetary penalty.
- **Change of name of LLP:** The 2008 Act states that the central government may direct an LLP to change its name on certain grounds. The Amendment Act removes some of these grounds, and empowers the central government to allot a new name to such an LLP instead of levying a fine.
- **Punishment for fraud:** Under the Act, if an LLP or its partners carry out an activity to defraud their creditors, or for any other fraudulent purpose, every person party to it knowingly is punishable. The Amendment Act increases the maximum term of imprisonment from two years to five years.
- **Non-compliance of orders of Tribunal:** Under the Act, non-compliance with an order of the National Company Law Tribunal (NCLT) is punishable. The Amendment Act removes this offence.
- **Compounding of offences:** Under the Act, the central government may compound any offence under the Act which is punishable only with a fine. The Amendment Act provides that a regional director (or any officer above his rank), appointed by the central government, may compound such offences.
- **Adjudicating Officers:** Under the Amendment Act, the central government may appoint adjudicating officers for awarding penalties. These will be central government officers not below the rank of Registrar. Appeals against orders of the Adjudicating Officers will lie with the Regional Director.
- **Special courts:** The Amendment Act allows the central government to establish special courts for ensuring speedy trial of offences.
- **Appeals to Appellate Tribunal:** The Amendment Act adds that appeals cannot be made against an orders that have been passed with the consent of the parties. Appeals must be filed within 60 days (extendable by another 60 days) of the order.
- **Small LLP:** The Amendment Act provides for formation of a small LLP where: (i) the contribution from partners is up to Rs 25 lakh (may be increased up to five crore rupees), (ii) turnover for the preceding financial year is up to Rs 40



lakh (may be increased up to Rs 50 crore). The central government may also notify certain LLPs as start-up LLPs (as recognised through notifications).

- **Standards of accounting:** Under the Amendment Act, the central government may prescribe the standards of accounting and auditing for classes of LLPs, in consultation with the National Financial Reporting Authority.

### Concept of "limited liability partnership":

- LLP is an alternative corporate business form that **gives the benefits of limited liability of a company and the flexibility of a partnership.**
- The LLP can **continue its existence irrespective of changes in partners.** It is capable of entering into contracts and holding property in its own name.
- The LLP is a **separate legal entity**, is liable to the full extent of its assets but liability of the partners is limited to their agreed contribution in the LLP.
- Further, **no partner is liable on account of the independent or un-authorized actions of other partners**, thus individual partners are shielded from joint liability created by another partner's wrongful business decisions or misconduct.
- **Mutual rights and duties of the partners within a LLP are governed by an agreement** between the partners or between the partners and the LLP as the case may be.
- The **LLP, however, is not relieved of the liability for its other obligations as a separate entity.**
- Since LLP contains elements of both 'a corporate structure' as well as 'a partnership firm structure' **LLP is called a hybrid between a company and a partnership.**
- LLP shall be a **body corporate and a legal entity separate from its partners. It will have perpetual succession.**

### Differences:

Basis	Partnership	Private Company	Limited Liability Partnership
<b>Prevailing Law</b>	Partnership is prevailed by 'The Indian Partnership Act, 1932' and various Rules made thereunder	Companies are prevailed by 'Companies Act, 2013'	Limited Liability Partnership are prevailed by 'The Limited Liability Partnership Act, 2008' and various Rules made thereunder
<b>Capital Required</b>	No minimum amount	Normally Rs. 1 Lacs	No minimum amount
<b>Name of Entity</b>	Any name as per choice	Name to contain 'Private Limited' in case of Private Company as suffix.	Name to contain 'Limited Liability Partnership' or 'LLP' as suffix.
<b>Registration</b>	Registration is optional	Registration with Registrar of ROC required.	Registration with Registrar of LLP required.
<b>Creation</b>	Created by contract with 2 persons	Created by Law	Created by Law
<b>Distinct entity</b>	Not a separate legal entity	Is a separate legal entity under the Companies Act, 2013.	Is a separate legal entity under the Limited Liability Partnership Act, 2008.



<b>Perpetual Succession</b>	It does not have perpetual succession as this depends upon the will of partners	It has perpetual succession and members may come and go.	It has perpetual succession and partners may come and go
<b>Charter Document</b>	Partnership Deed is a charter of the firm which denotes its scope of operation and rights and duties of the partners	Memorandum and Article of Association is the charter of the company that defines its scope of operations.	LLP Agreement is a charter of the LLP which denotes its scope of operation and rights and duties of the partners vis-à-vis LLP.
<b>Common Seal</b>	There is no concept of common seal in partnership	It denotes the signature of the company and every company shall have its own common seal	It denotes the signature and LLP may have its own common seal, dependant upon the terms of the Agreement
<b>Number of Members</b>	Minimum 2 and Maximum 20	2 to 200 members in case of Private Company	Minimum 2 partners and there is no limitation of maximum number of partners.
<b>Legal Proceedings</b>	Only registered partnership can sue third party	A company is a legal entity which can sue and be sued	A LLP is a legal entity can sue and be sued
<b>Liability of Partners/Members</b>	Unlimited. Partners are severally and jointly liable for actions of other partners and the firm and liability extend to their personal assets.	Generally limited to the amount required to be paid up on each share.	Limited, to the extent their contribution towards LLP, except in case of intentional fraud or wrongful act of omission or commission by the partner.
<b>Tax Liability</b>	Income of Partnership is taxed at a Flat rate of 30% plus education cess as applicable.	Income of Company is Taxed at a Flat rate of 30% Plus surcharge as applicable.	Income of LLP is taxed at a Flat rate of 30% plus education cess as applicable.
<b>Principal/Agent Relationship</b>	Partners are agents of the firm and other partners.	The directors act as agents of the company and not of the members	Partners act as agents of LLP and not of the other partners.

### Benefits offered by an LLP:

- Provides for a business format that would **combine the flexibility of a partnership and the advantages of limited liability of a company at a low compliance cost.**
- The LLP format is an alternative corporate business vehicle that **provides the benefits of limited liability of a company but allows its members the flexibility of organizing their internal management on the basis of a mutually arrived agreement.**
- This format would be **quite useful for small and medium enterprises in general.**
- Internationally, LLPs are the **preferred vehicle of business particularly for service industry or for activities involving professionals.**



- The hybrid structure of LLP will **facilitate entrepreneurs, service providers and professionals to organize and operate in an innovative and efficient manner for effectively competing in the global market.**
- The **cost of forming an LLP is low and there's' less compliance and regulatory burden.** It has no requirement of minimum capital contribution.

#### Limitations of LLP:

- **If compliances are not completed on time, then the LLP will have to pay a heavy penalty.**
- If the minimum number of partners is below two for six months, then the LLP will be dissolved. **It may be dissolved if the LLP is unable to pay its debts.**
- The LLP **does not have the concept of an IPO.**
- **Angel investors and venture capitalists cannot invest** in the LLP as shareholders.

#### Way Forward:

- **Enabling the LLPs the access to angel investors** by easing the norms will benefit a larger number of entrepreneurs to do their business.
- Currently, no two NRIs can form an LLP in India; one of the partners has to be an Indian resident. **NRIs should be allowed to form LLP.**
- **Foreign Direct investment (FDI) in an LLP** can only happen through the government route and therefore, the time required to form this partnership is much more. This should be eased.
- Apart from decriminalisation of offence, it is also important that the **norms for registering and establishing LLPs in India are entrepreneur-friendly and they find India a favourable place for setting up their start-ups.**
- An LLP does not **allow to issue Employee Stock Ownership Plans** which are nowadays used as the best tool to retain the key personnel of the company.

<https://www.mca.gov.in/MinistryV2/natureoflimitedliabilitypartnershipllp.html>

<https://prsindia.org/billtrack/the-limited-liability-partnership-amendment-bill-2021>

<https://taxguru.in/chartered-accountant/difference-partnership-firm-llp-company.html>

<https://youtu.be/j9lExhZicHo>