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CHAPTER

INCORPORATION OF LLP

2.1 INTRODUCTION

Two or more persons can associate for carrying out any lawful business with a view to profit. They have to file 'incorporation document' [similar to Memorandum of Association of a company], containing prescribed details like name, proposed business, address of registered office, name and address of partners, name and address of designated partners and other information as may be prescribed by rules [Section 11(2) of LLP Act, 2008].

The incorporation document should be filed electronically with Registrar having jurisdiction over the registered office of LLP in form FiLLiP [Form for incorporation of Limited Liability Partnership] [Rule 11 of LLP Rules, 2009].

2.1-1 Incorporation document

For a limited liability partnership to be incorporated - (*a*) two or more persons associated for carrying on a lawful business with a view to profit shall subscribe their names to an incorporation document (*b*) the incorporation document shall be filed in such manner and with such fees, as may be prescribed with the Registrar of the State in which the registered office of the limited liability partnership is to be situated; and (*c*) there shall be filed along with the incorporation document, a statement in the prescribed form, 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 the LLP Act and the rules made thereunder

have been complied with, in respect of incorporation and matters precedent and incidental thereto – section 11(1) of LLP Act.

2.1-2 Contents of incorporation document

The incorporation document shall—(*a*) be in a form as may be prescribed (*b*) state the name of the limited liability partnership (*c*) state the proposed business of the limited liability partnership (*d*) state the address of the registered office of the limited liability partnership (*e*) state the name and address of each of the persons who are to be partners of the limited liability partnership on incorporation (*f*) state the name and address of the persons who are to be designated partners of the limited liability partnership on incorporation (*g*) contain such other information concerning the proposed limited liability partnership as may be prescribed – section 11(2) of LLP Act.

2.1-3 Punishment for false statement while incorporating LLP

If a person makes a statement under section 11(1)(*c*) which he—(*a*) knows to be false; or (*b*) does not believe to be true,shall be punishable with imprisonment for a term which may extend to two years and with fine which shall not be less than ten thousand rupees but which may extend to five lakh rupees – section 11(3) of LLP Act.

2.1-4 Procedure for Incorporation of LLP at a glance

Procedure at glance is as follows:

- Two partners to be designated as 'designated partners' should apply and get DIN (Director Identification Number) from Central Government by applying electronically in form No. 7 and subsequently sending physical forms.
- The designated partners should obtain Digital Signature Certificate (DSC) Class II or above from a Certification Agency (CA).
- User registration - Register DIN and DSC with LLP by visiting www.llp.gov.in.
- Check name availability which is available on the aforesaid website
- Apply for reservation of name in form RUN-LLP. Alternatively, application for reservation of name can be made along with incorporation document in form FiLLiP [Form for incorporation of Limited Liability Partnership]
- After obtaining reservation of name, fill up form FiLLiP [Form for incorporation of Limited Liability Partnership] It has to be

digitally signed by designated partner and a professional (advocate/practising CA/CS/ICWA). Upload the form and pay fees electronically.

- LLP will be incorporated by ROC and registration certificate will be granted by Registrar of Companies (ROC) in form No. 16
- File form 3 (Information with regard to LLP Agreement) and form 4 (Notice of appointment of partner/designated partner) electronically with fees. The details can be submitted either with form FiLLiP [Form for incorporation of Limited Liability Partnership] itself or within 30 days of date of incorporation. If not submitted within 30 days, additional fees would be payable.
- Send original copy of LLP Agreement which is duly stamped.
- LLP is now ready for commencing business.

2.2 NAME OF LLP

First step is obtaining name approval. Second step is to file documents for incorporation.

Last words of name shall be LLP or 'Limited Liability Partnership'.

Every limited liability partnership shall have either the words "limited liability partnership" or the acronym "LLP" as the last words of its name – section 15(1) of LLP Act.

LLP should have name which should not be similar to name of other entity or trade mark of other person.

Name should not be undesirable. [Section 15(2)(*a*) of LLP Act, 2008].

Name should not identical or too nearly resembling to that of any other limited liability partnership or a company or a registered trade mark of any other person under the Trade Marks Act, 1999 – Section 15(2)(*b*) of LLP Act, amended *vide* LLP (Amendment) Act, 2021 w.e.f. 1-4-2022.

2.2-1 Reservation of name of LLP

Name should be got reserved from ROC under section 16 of LLP Act, by submitting application in form RUN-LLP (Reserve Unique Name – LLP) with prescribed fees (fee is as specified in Annexure A of LLP Rules, 2009) [form changed w.e.f. 2-10-2018]

Alternatively, application for reservation of name can be made along with incorporation document in form FiLLiP [Form for incorporation of Limited Liability Partnership]

Procedure prescribed for reservation of name - A person may apply in such form and manner and accompanied by such fee as may be prescribed to the Registrar for the reservation of a name set out in the application as— (*a*) the name of a proposed limited liability partnership; or (*b*) the name to which a limited liability partnership proposes to change its name – section 16(1) of LLP Act.

Upon receipt of an application under section 16(1) and on payment of the prescribed fee, the Registrar may, if he is satisfied, subject to the rules prescribed by the Central Government in the matter, that the name to be reserved is not one which may be rejected on any ground referred to in section 15(2) of LLP Act, reserve the name for a period of three months from the date of intimation by the Registrar – section 16(2) of LLP Act.

The reservation of name will be communicated by ROC within seven days. If suggested name is rejected, one opportunity for submission shall be given for rectification of defects within 15 days [Rule 18(5) of LLP Rules, 2009 amended w.e.f. 2-10-2018].

Name reserved for three months - Name approved will be reserved for a period of three months from date of intimation by ROC [Rule 18(6) of LLP Rules, 2009].

2.2-2 Criteria for approval of name

The name should not be in violation of Emblems and Name (Prevention of improper use) Act, 1950 [Rule 18(1) of LLP Rules, 2009]. Name should not be offensive, similar to existing LLP, name of registered trade mark etc. Names like Cooperative, National, Union, Central, Federal, Republic, President, Rashtrapati, Consulate, Municipal, Panchayat, local authority etc. are not allowed. Names like Bank, Insurance, Company Secretaries, Chartered Accountant, Advocate etc. will not be allowed without approval of the regulatory authority [Rule 18(2) of LLP Rules, 2009]

Approval of concerned regulatory authority - Where one of the objects is to carry on business of banking, insurance or to practice profession of CA, CS, CMA or Architect, the company/LLP can be incorporated only on production of in-principle approval/NOC from the concerned regulator/professional Institute - MCA circular No. 2/2012 dated 1-3-2012 and *proviso* to rule 18(2)(*xvi*) of LLP Rules, 2009.

2.2-2A Reservation of name

The name should not be in violation of Emblems and Name (Prevention of improper use) Act, 1950 [Rule 18(1) of LLP Rules, 2009]. Name should

not be offensive, similar to existing LLP, name of registered trade mark etc. Names like Cooperative, National, Union, Central, Federal, Republic, President, Rashtrapati, Consulate, Municipal, Panchayat, local authority etc. are not allowed. Names like Bank, Insurance, Company Secretaries, Chartered Accountant, Advocate etc. will not be allowed without approval of the regulatory authority [Rule 18(2) of LLP Rules, 2009]

Provisions as contained in rules are as follows.

Rule 18(1) - The name of the limited liability partnership shall not be one prohibited under the Emblems and Names (Prevention of improper use) Act, 1950.

Rule 18(2) - A name which falls within the categories mentioned below will not generally be reserved:

(*i*) If it includes any word or words which are offensive to any section of the people.

(*ii*) If the proposed name is the exact Hindi translation of the name of an existing limited liability partnership in English or Hindi of an existing limited liability partnership.

(*iii*) If the proposed name has a close phonetic resemblance to the name of a LLP in existence, for example, J.K. LLP., Jay Kay.

(*iv*) If it includes the word Co-operative, Sahakari or the equivalent of word 'co-operative' in the regional languages of the country.

(*v*) If it connotes the participation or patronage of the Central or State Government, unless circumstances justify to, e.g., a name may be deemed undesirable in certain context if it includes any of the words such as National, Union, Central, Federal, Republic, President, Rashtrapati, etc.

(*vi*) If the proposed name contains the words 'British India'.

(*vii*) If the proposed name implies association or connection with any Embassy or Consulate or of a foreign government which suggests connection with local authorities such as Municipal, Panchayat, Zila Parishad or any other body connected with the Union or State Government.

(*viii*) Omitted.

(*ix*) If it is different from the name/names of the existing limited liability partnership only to the extent of having the name of a place within brackets before the words 'limited liability partnership', for example, Indian Press (Delhi) limited liability partnership should not be allowed in view of the existence of the LLP named Indian

Press Limited Liability Partnership. *However, if NOC is received from LLP or company, name can be reserved.*

(*x*) If it includes name of registered Trade mark, unless the consent of the owner of the trade mark has been produced.

(*xi*) *the proposed name is identical with or too nearly resembles the name of any other limited liability partnership or a company [amended w.e.f. 1-4-2022]* [The earlier words were as follows -In case the proposed name is identical with or too nearly resembles the name of a firm or LLP incorporated outside India and reserved by such firm, LLP or company with the registrar in accordance with these rules].

(*xii*) If it is identical with or too nearly resembles the name of the limited liability partnership or a company in liquidation.

(*xiii*) If it includes words like 'Bank', 'Insurance' and 'Banking', 'venture capital' or 'mutual fund' or business activity includes the words like 'Bank', 'Insurance' and 'Banking', 'Venture Capital' or 'mutual fund' or such similar name without the approval of the regulatory authority. Approval of regulatory authority shall be obtained at the time of application for incorporation or change of name of existing LLP.

(*xiv*) Omitted

(*xv*) If the proposed name includes words like French, British, German etc., unless the partners satisfy that there is some form of collaboration and connection with the foreigners of that particular country or place, the name of which is incorporated in the name.

(*xvi*) the proposed name of limited liability partnership includes the words company secretary, chartered accountant, advocates or such similar words as indicative of a profession, as part of the proposed name, the same shall be allowed only after obtaining approval from the Council of the governing Institute or such authority as may be nominated by the Government, in this behalf. Approval of council governing the profession shall be obtained at the time of application for incorporation or change of name of existing LLP.

2.2-3 Criteria for approval of name of a LLP

Following principles are kept in mind while selecting/approving a name— [based on circulars issued by DCA and MCA from time to time]

Name Should not be similar to other names - Name should not be identical or should not too nearly resemble the name of another registered company.

Name Should not be undesirable - Name should not be considered undesirable by Central Government.

Offensive names - Offensive name or name suggesting unlawful activity is not permissible.

No violation of Emblems Act - Name should not violate provisions of Emblems and Names (Prevention of Improper Use) Act, 1950. (Instructions reiterated in circular No. 24/2001 dated 21-11-2001). - - The Act prohibits use of names of UNO, WHO, Indian national Flag, Government or its department, President, Governor or Union of India, Rashtrapati, Rashtrapati Bhavan, Raj Bhavan, Mahatma Gandhi, Prime Minister of India, Names, when the company medals & badges used by Government, name of International Civil Organisation or International Crime Police Organisation, World Meteorological Organisation, name and symbol of Sri Sathya Sai Central Trust, Logo/emblem of NHRC (National Human Rights Commission).

Use of the emblems or seals of these organisations or institutions is also prohibited.

Misleading name not permissible - Name misleading i.e. key word suggesting a great scale while company is with small resources. Thus, following are restrictions - word 'Corporation' permitted when authorised capital is Rs. 5 crores. Words like International, Global, Asia etc. is permitted if authorised capital is Rs. 1 crore. Words like Hindustan, India, Bharat permitted when authorised capital Rs. 50 lakhs. Words like Industries/Udyog permitted if capital is Rs. 1 crore. Words like 'Enterprise', 'Business' 'Manufacturing' permitted when capital is Rs. 10 lakhs.

Abbreviated names only for established company - Abbreviated names are not allowed in the first instance. However, an established company may change its name to abbreviated form by showing that it has become well known in its field under abbreviation [DCA circular No. 4/93 dated 31.3.1993] - e.g. Delhi Cloth Mills Ltd. was permitted to change its name to DCM Ltd. Indian Tobacco Co. Ltd. was changed to ITC Ltd.

Names starting with small letters - Name starting with small letters or having small letters (like 'i2 Technologies Ltd.' can be permitted - Department circular No. 6/99 dated 13.5.1999.

Stand alone genetic name not permitted - Use of stand alone genetic name e.g. 'Y2K' is not permitted. It should be with other proper noun preceding / succeeding it - Department circular No. 6/99 dated 13.5.1999.

Words like bank, trust, investment etc. - Words like bank, banking, investment and trust shall not be allowed unless circumstances justify it.

Names including word 'insurance'- Since insurance sector is being opened for entry to private sector, name with the word 'insurance' or 'risk corporation' as part of the name will be allowed only after consulting with RBI and Insurance Regulatory Authority, Jeevan Bharti Building, Tower 1, Connaught Circus, New Delhi 110 001. - Department circular No. 6/99 dated 13.5.1999. - - Similarly, name may indicating 'insurance broker' business should be permitted – DCA circular No. 19/2003 dated 25-4-2003.

Name of mutual fund - Name containing word 'mutual fund' shall not be permitted unless such companies are actually going to be incorporated as mutual funds. It has been clarified that NBFCs / Nidhis u/s 620A are not mutual funds. – PIB Press release dated 14.2.2000.

Change of name reflecting software business - Change of name of company to reflect business of software (e.g. name containing words like Infosys, Software, Cyber, Cyberspace, Computers etc.) will be permitted only if a substantial portion of its income is derived from software business. - PIB press release dated 16-8-1999.

2.2-4 Obtaining consent of other companies in group for using group name in name of a LLP

If a LLP intends to use group name as part of its name (e.g. Kirloskar, Birla, Tata etc.) it is standard practice of ROC to obtain no objection letters from other group companies.

In *Kilburn Electricals Ltd.* v. *Regional Director* (1999) 22 SCL 272 = 99 Comp Cas 243 (Mad.), it was held that if such NOC is given in respect of one company, such permission is restricted to that company only and does not automatically apply in respect of subsidiary or another company further floated by such company (*i.e.* by company to which NOC was granted to use group name).

In *Kirloskar Diesel Recan Ltd.* v. *Kirloskar Proprietary Ltd.* - AIR 1996 Bom HC 149 = 1997 PTC 17 (Bom HC), it was held that trade mark includes trade name or business name. The name 'Kirloskar' is used by Kirloskar group of companies and has earned reputation. That name cannot be used by any other company. [Generally, there is no copyright in a name. The name 'Montari' is an invented name. However, Khosla,

Kirloskar or Prakash are general names. Even then, 'passing off' action was upheld. One reason is that name of a company is selected by choice and hence action of 'passing off' is possible. A surname or personal name is not by choice and hence in such cases, 'passing off' is not permissible.].

In *Essel Packaging Ltd.* v. *Essel Tea Exports* (1998) 3 Bom CR 767 = 19 PTC 521 (Bom HC), injunction was granted when 'Essel group of companies' objected to the use of word 'Essel' by a tea export company. It was held that even if business of defendant and plaintiff is different, in passing off action, what has to be considered whether use of the same would cause confusion. [In this case, it was shown that some people indeed thought that 'Essel' group has started tea export business and in fact, congratulated them on new business].

In *Hira Lal & Sons (Export) P Ltd.* v. *UOI* (2005) 64 SCL 385 (Del HC), Hira Lal & Sons (Export) P Ltd. was existing since 1973. One grandson of Hira Lal formed another company with name Hira Lal & Sons (I) P. Ltd. Regional Director directed the company to add prefix 'Anupam'. The order was contested. It was held that since Hira Lal is name of grandfather and family name, its use cannot be denied to another family member.

2.2-5 Free name search facility

Free name search facility (of existing companies/LLPs) is available on MCA portal www.mca.gov.in (hyper link available on LLP portal). The system will provide the list of similar/closely resembling names of existing companies/LLPs based on the search criteria filled up. Thus, once names of existing companies are know, one can select a name which does not closely resemble any existing name.

2.2-6 Filling Form RUN-LLP - Application for reservation of name of LLP

Following are important points in connection with filing of form 1:

Sr. No. of form 1	Guideline for filling the column
2(*i*)(*a*)	Application can be digitally signed either by individual partner or nominee of a body corporate as partner
2(*i*)(*b*)	Applicant (designated partner) need not have DIN at that stage but advisable to have DIN, since without that, incorporation of LLP will not be possible

Sr. No. of form 1	Guideline for filling the column
2(*b*) to 2(*k*)	Details of full name, occupation, address with city, State and Pin code, ISO country code, Country, e-mail ID, phone and fax should be kept ready.
3	Details of two proposed designated partners should be filled in. It is a drop down menu. At least one of the designated partner should be resident of India. If signatory is nominee of body corporate, name of body corporate and date of resolution appointing him as nominee should be kept ready. ***Copy of resolution is required to be attached***.
5	This column is mainly relevant for Maharashtra and Tamil Nadu as there are two ROCs in these States.
6	Relevant in case of conversion from firm/company to LLP.
7	If the business requires approval of appropriate authority (e.g. banking, stock exchange etc.) in principle approval of appropriate authority should be attached to e-form.
8	Monetary value of 'contribution' is equivalent to authorized capital in case of a company.
Part B - 9 to 12	Relevant only for change of name of existing LLP
13	Six names should be proposed in order of preference. The name should end with word 'LLP'. See guidelines relating to norms for approval of name of LLP.
14	The key words or coined words in proposed name of LLP should be explained. If name indicates an activity, it should be related to proposed main business e.g. 'Meera Oil LLP' cannot have software development as its main business
15	Details of trade mark if name relates to registered or applied trade mark

2.2-7 Enclosures to form RUN-LLP

Following should be enclosed

- If name is of some group, NOC from other group companies should be attached
- If name relates to trade mark, its registration or application for registration should be attached. NOC from others who have right in trade mark would be required.
- In principle approval of appropriate authority wherever applicable.