

**RESPONSIBILITIES OF LIMITED LIABILITY PARTNERSHIP
INCORPORATED UNDER LIMITED LIABILITY
PARTNERSHIP ACT, 2008**

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I. Introduction

The limited Liability Partnership Act, 2008, has introduced a new form of business organization in the Indian business world known as “Limited Liability Partnership LL.P. Entirely different from the traditional partnership formed under the Partnership Act, 1932, with unlimited liability of its partners. The newly introduced LL.P. Requires to be registered and has been given a legal status of a body corporate, having a separate legal entity and perpetual succession and the limited liability of its partners is limited. In this way a LL.P. looks to be very similar to a “limited liability company” registered under the Indian Companies Act, 1956.

It is made compulsory that LL.P. must be registered. at least two persons can form it for carrying on business with a view to profit. They have to subscribe their names in the incorporation document to be filed with registrar at the time of registration². On registration, a LL.P. shall by its name be capable of - (a) suing or be sued, (b) acquiring, owning, holding and developing or disposing of property whether movable or immovable tangible or intangible, (c) having a common seal if it decides to have one, and (d) doing and suffering such other acts or things as bodies corporate may lawfully do and suffer³.

However, it is clear that LL.P. is a legal entity distinct from its partners like a company⁴ registered under Companies Act, 1956. It has the capacity to perform the entire functions provided by LL.P. Act 2008. But having no physical body, it acts through its partners, designated partners and employees and be liable itself for the acts done by them but such acts must have been done under authority given to them. The partners and designated partners also have been made liable if they fail to perform the functions imposed upon them by the LL.P. Act, 2008. It is mandatory to appoint at least two designated partners for the compliance of statutory requirements, such to maintain the books and accounts prepare the statement of accounts and solvency and annual returns in every financial year and file with registrar. Partners also

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2 Limited Liability Partnership Act, 2008, Section 11.

3 Ibid, Section 14.

4 Company is a legal person distinct from its members: for detailed discussion, see Solomon v. Solomon and Co., Ltd., (1897) AC 22; Kandoli Tea company Ltd., Re, ILR (1886) 13 Cal 43.

have the right to conduct the affairs of the LL.P. as an agent of it. On the other hand, several responsibilities have been imposed also upon LL.P. by the Act and in any case, if it fails to perform such responsibilities, it has been made also liable for it though it is not a human being. Such liabilities either may be civil or criminal or both. The responsibilities and in case of its default the punishments imposed upon LL.P. have been discussed in this article.

II. Responsibilities Liabilities

The discussion with regard to responsibilities and in case of its default, punishments imposed on LL. P., has been made dividing into heads as under.

- (a) Responsibility as to fine,
- (b) Responsibility as to make good the default,
- (c) Responsibility as to be wound up, and
- (d) Responsibility as to be struck off the name.

(a) Responsibility as to fine

LL. P. has been made liable to fine for any default if it fails to perform its responsibilities. Provisions have been made in with regard to such defaults the minimum punishment as well as maximum punishment. If it commits any offence for the second or subsequent time has been made liable with fine which shall be twice of the amount of fine prescribed for such offence. It is applicable only in those offences to which punishment has been provided fine or imprisonment with fine. In other words, where punishment has been provided only imprisonment for the offence, LL.P. will not be punished for such offences⁵.

Further, where offence committed under this Act is proved that the partner or designated partners or LL.P. as the case may be the guilty of the offence shall be liable to be proceeded against and punished accordingly if (i) offences have been committed with the consent or connivance of partner or designated partners of LL.P. Or (ii) to be attributable to any neglect on the part of the partner or designated partners of LL.P.⁶ In order to the responsibilities and in case of defaults punishable with fine, may be enumerated as under⁷.

1. It is made necessary that every LL.P. must have at least two designated partners who are individual and at least one of them shall be resident of India. In case, where all the partners of LLP are body corporate or either one or more partners and body corporate at least two individuals who are partners of such LLP or the nominees of such body corporate shall act as designated partners.

⁵ Limited Liability Partners Act, 2008, Section, 74.

⁶ Ibid, Section 76.

⁷ Ibid, Sections 10, 13, 17, 21, 25, 34, 35, 60, 62 and 74.

If any default is made in this regard, LL.P. shall be punishable with fine which shall not be less than ten thousand rupees and which may extend to five lakh rupees.

2. It is required by sub Section 4 of Section 7 that LL.P. shall file with registrar the particulars of which individual has given his consent to act as designated partners in the prescribed form and manner within 30 days from his appointment.

Further, Sub Section 5 of section 7 provides that the individual who is eligible to be designated partners shall satisfy such condition and requirements which may be prescribed.

While Section 9 provides that LL.P. may appoint a designated partners within 30 days of vacancy arising for any reason according to the provisions of Sub Section 4 and 5 of Section 7.

If default is made with regard to above requirement, LL.P. shall be punishable with fine which shall not be less than ten thousand rupees but may extend one lakh rupees.

3. It has been made punishable with fine which shall not be less than two thousand rupees but which may extend to twenty five thousand rupees if LL.P. makes default with regard to the following matters:
 - (a) LL.P. shall registered office to which all communications and notices shall be addressed where they shall be received.
 - (b) Documents shall be served on LL.P, partner and designated partners there of sending under post certificate, registered or any manner prescribed by LL.P. at registered office or other address prescribed by the LL.P.
 - (c) LL.P., may change the place of its registered office and file notice with regard to such change with registrar in the form manner specified. Any such change shall take effect only upon such filing.
4. Section 17 (2) provides that if LL.P., fails to comply direction given under Sub sections 1 and 2 of this section it shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees. Those directions are as follow

Where the Central Government is satisfied that

- (a) The name of LL.P., comes under the names stated in section 15.
- (b) The name is identical with or too nearly resembles the name of any other LL.P., or body corporate or other name as to be likely to be mistaken for it.

LL.P., comply such directions within 3 months or longer person which

Central Government may prescribe.

5. It is required that LL.P. shall ensure that its invoice, official correspondent and publication bear the following namely
 - a) The name and address of its registered office and registration number of LL.P.
 - b) Statement that it is registered with limited liability.

If default is made then LL.P. shall be punishable with fine which shall not be less than two thousand rupees but may extend to twenty five thousand rupees.

6. If any person becomes or cease to be a partner or the name and address of the partner or LL.P. is change, then LL.P. must file notice with registrar about such becoming or ceasing partner or change from the date when he becomes or ceases to be partner or change of name and address.

If default is made then LL.P., shall be liable to fine which shall not be less than two thousand rupees but which may extend to twenty five rupees.

7. It is required that LL.P., shall maintain proper bookstand accounts relating its affairs and also maintain it at registered office. It must prepare and file with registrar the statement of accounts and solvency in every financial year. It is also required that such accounts must be audited accordance with the rule prescribed. If any default is made in this regard, LL.P., is made liable to fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees.
8. Every LL.P., shall file with registrar the annual report dully authenticated and accompanied by fee prescribed within 60 days from the closure of its financial year. If it fails to comply such requirements, shall be punishable with fine which shall not be less than twenty five thousand rupees but may extend to five lakh rupees.
9. Where under the scheme of compromise and arrangement order has been passed by tribunal LL.P., shall file the copy of such order with the registrar within 30 days from the date of order. If default is made in filing of such order fine has been imposed upon LL.P., up to one lakh rupees.
10. Where the order by the Tribunal has been passed with regard to reconstitution and amalgamation of LL.P., it is made necessary for LL.P., to file the copy of order with registrar within 30 days from the order. If default is made in filing of such order fines have been imposed upon it which may be up to fifty thousand rupees.

It should be noted that if any person including LL.P, is guilty of offence under this Act for which no punishment is expressly provided shall be liable to fine which may extend to five lakh rupees but shall not be less than five

thousand rupees. If default continues will be also liable with fine which may be fifty rupees per day.

Statement of defaults made by LL.P., punishable with fine Rs. minimum Sections particular of defaults made fines Rs. minimum

Section	Particular	Minimum Rs.	Maximum Rs.
10 (i)	failure to appoint the minimum number of designated partners required by LL. P. act, 2008	10,000	5,00,000
10 (ii)	failure to (I) fulfill the requirement as to formalities regarding the appointment required by LL. P. act and (ii) fill the vacancy of designated partners within prescribed time	10,000	100,000
13 (iv)	failure (I) to have the registered office or (ii) maintain documents at registered office or (iii) file notice about change with registrar	2,000	25,000
17 (ii)	failure to change the name of LL. P. accordance with the direction given by Central Government	10,000	100,000
21(ii)	Failure to ensure the use of name and registration number ltd word on its invoice documents	2,000	25,000
25 (iv)	Failure to file with registrar about becoming or ceasing partners or change in name and address of partners	2,000	25,000
34 (v)	Failure to maintain proper books and accounts, statement of accounts and solvency with registrar	10,000	1,00,000
35 (ii)	Failure to file authenticated annual report with registrar	25,000	5,00,000
60 (iv)	Failure to file the copy of order of tribunal regarding compromise and arrangement		100,000
62 (iv)	Failure to file the copy of order of Tribunal regarding the reconstitution and amalgamation		50,000
74	In case no penalty provided for default by the Ac	5,000	5,00,000

(b) Responsibility as to make good the default

Where LL.P. makes default in complying with (i) any provision of this Act or other law which requires the filing in any manner with Registrar of any return, account or other documents or given of notice to him of any matter, or (ii) Any request of registrar to amend or complete resubmit any document or to submit a fresh document and it fails to make good the default within 14 days after service on it of a notice requiring to be done, Tribunal may on application by registrar make order directing that LLP makes good the default within such time as is specified in order.

Order may provide that the entire costs incidental to application shall be born by LL. P.

It should be noted that it does not limit the operation of imposing penalty in respect of any default referred in this section 6.

(c) Responsibility to be wound up

LL. P., can be wound up in case of certain specified defaults. Such types of defaults are stated in section 65 of the LL.P. Act, 2008 which are as follow:

- (i) If for more than six months the number of partners in LL. P., is reduced below two,
- (ii) If LL. P., is unable to pay its debts,
- (iii) If LL. P., has acted against the interest of sovereignty and integrity of India, security of state or public order,
- (iv) If LL. P., has made default in filing with registrar the statement of accounts and solvency or annual return for any five consecutive financial years,
- (v) If tribunal is opinion that it is just and equitable that it should be wound up,
- (vi) In addition to the grounds stated above, where inspector in his investigation report has stated that the affairs of the LL. P., has been conducted as which is just and equitable ground to winding up the LL.P.⁸

Generally, Where LL.P., has lost its substratum, or where there are complete dead lock in the management or oppression and mismanagement or it involves in fraudulent or illegal activities etc are the grounds for winding up under the just and equitable clause

8 Ibid, Section 51

(d) Responsibility as to be struck off

When LL. P. is not carrying in on its business or in operation it means that LL. P., has become defunct. Therefore, to keep it in existence has no worth and its existence should be ended. Keeping in mind it, provisions have been made in Section 75 of the LL. P. Act, 2008. According to this Section If registrar has reasonable cause that LL. P., is not carrying on its business or in operation, he may by giving notice and the opportunity of being heard strike off the name of the LL. P., from the firm register.

III. Conclusion

To conclude, it may be submitted that The LL.P., is a new form of business organization introduced by the LL. P., Act, 2008, deferent from the traditional partnership having unlimited liability of its partners. The registration of partnership is mandatory and after its registration becomes a body corporate, having the capacity to perform all the functions exercisable by a body corporate. It performs the functions through its partners. But for the compliance of statutory requirements to appoint the designated partners, is made mandatory by the LL.P., Act, 2008. If they fail to comply the statutory requirements they have been made liable for it. Likewise, if LL.P., Makes default in discharging the responsibilities which are required by LL. P., Act 2008 to be discharged by it, shall be punishable with fine. It is not liable for those offences which are punishable with imprisonment because it is an artificial person having no physical body. Provisions have been made for the minimum and maximum punishment. If any offence is committed for the second time or subsequent time, punishment shall be twice of the amount of the fine prescribed for that offence.

In addition to fine Tribunal may make order:

- (i) To make good the default within the time prescribed or
- (ii) To wind up the LL.P., or
- (iii) Registrar may strike off the name of the LL.P., from the register if he has the reasonable cause that it is not carryon on business or inoperative, as the case may be in short, it may be said that LL.P., also becomes liable for, if it fails to discharge its responsibilities even though it is invisible, intangible and having no physical body.