

Drafting of LLP Agreement

Nashik Branch
WIRC of ICAI
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AGREEMENT

One does not like hot,
the other does not like cold;
make it tepid to make an
agreement

AGREEMENT

“A conspiracy is nothing but a secret **agreement** of a number of men for the pursuance of policies which they dare not admit in public”

Mark Twain

AGREEMENT

“My people and I have come to an **agreement** which satisfied us both. They are to say what they please, and I am to do what I please.”

AGREEMENT

Every promise and every set of promises, forming the consideration for each other, is an agreement.

AGREEMENT

A coming together of parties in opinion or final determination; the union of two or more minds in a thing done or to be done; a mutual assent to do a thing. The joining together of two or more minds in respect of the same matter.

AGREEMENT

Verbal or written contract
between two or more parties to
explain the way they intend to
act in respect of each other

AGREEMENT

“An agreement as the courts have said, ‘is nothing more than manifestation of mutual assent’ by two or more parties legally competent persons to one another. Agreement is in some respects a broader term than contract or even than bargain or promise. It covers executed sales, gifts and other transfers of property.”

LLP

A corporate business vehicle that enables professional expertise and entrepreneurial initiative to combine and operate in flexible, innovative and efficient manner, providing benefits of limited liability while allowing its members the flexibility for organizing their internal structure as a partnership.

www.llp.gov.in

REGIONWISE DISTRIBUTION OF LLPS IN INDIA

REGION	NO. OF LLPS
EASTERN	230
NORTHERN	824
SOUTHERN	1090
WESTERN	1794
TOTAL	3938

- As on 24th September, 2010
- Source: www.llp.gov.in

Report Date	1-Sep-14				
Data Date	31-Aug-14				

Distribution of Active Indian LLPs with respect to Obligation of Contribution (as on 31 August 2014)

Obligation of Contribution Range	No. of LLPs	Contribution (in Rs Lakhs)
Up to 1 lakh	17908	13,973.17
Above 1 lakh to 5 lakh	3243	11,125.81
Above 5 lakh to 10 lakh	1620	15,129.95
Above 10 lakh to 25 lakh	976	18,087.57
Above 25 lakh to 50 lakh	594	24,434.94
Above 50 lakh to 1 crore	540	47,088.81
Above 1 crore to 2 crore	251	38,600.40
Above 2 crore to 5 crore	277	96,968.85
Above 5 crore to 10 crore	115	91,107.76
Above 10 crore to 25 crore	81	136,064.92
Above 25 crore to 100 crore	81	437,680.74
Above 100 crore to 500 crore	10	244,758.01
Above 500 crore to 1000 crore		
Above 1000 crore		
Grand Total	25,696	1,175,020.94

•Source: www.llp.gov.in

**11,616 LLPs registered in the
calendar year 2014**

www.llp.gov.in

• Procedure for Incorporation in Brief

- At least 2 persons to be partners.
- At least 2 persons to be Designated Partners.
- Acquire DSC and DPIN for the Designated Partners.
- Application for Name Availability in Form 1.
- Application for Incorporation in Form 2.
- **Drafting of LLP Agreement and filing within 30 days of incorporation in Form 3.**
- Filing of Consents of Partners in Form 4.

- **LLP Agreement defined**

- *S.2(1)(o): "limited liability partnership agreement" means any written agreement between the partners of the limited liability partnership or between the limited liability partnership and its partners which determines the mutual rights and duties of the partners and their rights and duties in relation to that limited liability partnership".*

- It is an agreement u/s 11 of Indian Contract Act.
- **11. Who are competent to contract**
- Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind, and is not disqualified from contracting by any law to which he is subject.

It is an agreement inter-se
between the partners of the
LLP.

It is an agreement between
the LLP and the partners.

LLP Agreement governs
the mutual rights and duties
of the partners and the LLP.
(S. 23)

- **NO PRESCRIBED FORMAT OF THE LLP AGREEMENT.**

- **THE FIRST SCHEDULE LAYS DOWN PROVISIONS REGARDING MATTERS RELATING TO MUTUAL RIGHTS AND DUTIES OF PARTNERS AND LLP IN THE ABSENCE OF AN AGREEMENT.**

- **HOW TO DRAFT A LIMITED LIABILITY PARTNERSHIP AGREEMENT?**

- “Simplicity is the ultimate sophistication.”
– Leonardo da Vinci

- “Make everything as simple as possible, but not simpler.”

– Albert Einstein

- The aim of the LLP Agreement is to provide a written structure for the business with respect to each partner's responsibility, rights, profit/liability sharing, and also the terms on which the partnership can be terminated.

- **Four key points to remember while drafting an LLP Agreement:**

- *Ownership*

- *Management*

- *Liquidation*

- *Conflict Resolution*

- ***OWNERSHIP***

- Do all partners own the partnership equally?
- Generally ownership, and voting rights, are proportional to the amount of capital invested.
- Profit and Loss sharing ratio?

• ***MANAGEMENT***

- All Partners have authority to bind the partnership into agreements, unless the partnership contract stipulates otherwise.
- It's important to lay out what types of decisions a partner may make unilaterally, and which ones require a vote.
- Laying out the signing authority for any bank accounts is another critical element.

- ***LIQUIDATION***

- Partnerships may automatically dissolve if a partner dies without an agreement laying out an alternate course.
- Procedures may also include circumstances for buying out a partner, and conditions under which new partners may be added.

- ***CONFLICT RESOLUTION***

- If things go south, it's not a bad idea to have an agreed-upon method of conflict resolution laid out in writing, in advance.

CLAUSES NORMALLY INCLUDED IN A LIMITED LIABILITY PARTNERSHIP AGREEMENT

Duration of LLP

Purpose / Business of LLP

Initial Partners

Subsequent Partners

Designated Partners

LLP's Capital

Interest on Capital Contribution

Sharing of Profit or Loss

Remuneration to Partners Perks / Holidays

Management of LLP Business Decision Making Process

Bank Accounts

Non Compete

Non Disclosure

Liability of LLP to Indemnify the Partner

Liability of Partners to Indemnify

Expulsion of Partner

Lending Money or Transacting Business by Partners with LLP

Insurance

Compulsory Cessation of Partnership

Method of Settling Account on Partner Ceasing to be Partner

Duties and Liabilities of Designated Partners

Books of Account, Annual Accounts & Audit

Recording of Minutes

Dispute Resolution

Transfer or Assignment of Interest

Voluntary Resignation / Retirement

Dissolution / Winding Up

Common Seal

Ratification of LLP Agreement if agreement entered into before incorporation of LLP

Changes in Agreement to be filed with MCA
within 30 days in Form 3

- “One should not aim at being possible to understand, but at being impossible to misunderstand.”

– Quintilian



THANK YOU

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