

Limited Liability Partnership (Amendment) Act, 2021

The Lok Sabha on August 9, 2021 passed The Limited Liability Partnership (Amendment) Bill, 2021. On August 4, the Bill was passed in the upper house of the Parliament (Rajya Sabha). The Limited Liability Partnership (Amendment) Act, 2021 received the assent of the President on August 13, 2021. The Act amends the Limited Liability Partnership Act, 2008 (LLP Act, 2008). And facilitates greater ease of living to law-abiding corporate and to decriminalize certain provisions of LLP Act, 2008.

The Limited Liability Partnership (Amendment) Act, 2021 was notified by MCA on August 13, 2021. It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act.

Key Changes

1. Wherever the Companies Act, 1956 (CA, 1956) was mentioned to be substituted with the Companies Act, 2013 (CA, 2013) and section numbers are also changed accordingly.

2. Section 2 of LLP Act, 2008: Definitions

- 2.1 Section 2 (1) (c): **Appellate Tribunal**—National Company Law Appellate Tribunal u/s 410 of CA, 2013;
- 2.2 Section 2 (1) (d): **Body Corporate**-- Section 2 (20) of CA, 2013;
- 2.3 Section 2 (1) (e): **Business**-- Altered to include Occupation except any activity which the CG may be notification exclude;
- 2.4 Section 2 (1) (ra): **Regional Director**-- New Definition added for the purpose of LLP Act or CA, 2013;
- 2.5 Section 2 (1) (s): **Registrar**-- Definition substituted-- now means a person appointed by the Central Government for the purpose of LLP Act or CA, 2013;
- 2.6 Section 2 (1) (ta): **Small Limited Liability Partnership**-- New Definition is added based on Contribution of partners and Turnover of the LLP.
 - Contribution-- less than Rs. 25 Lakh to Rs.5 Crore as may be prescribed
 - Turnover immediately preceding financial year-- less than Rs. 40 lakhs to Rs. 50 Crores as may be prescribed; or
 - Other requirements as prescribed
- 2.7 Section 2 (1) (u): **Tribunal**-- National Company Law Tribunal u/s 408 of CA, 2013;

3. Section 7 of LLP Act, 2008: Designated Partner (substituted)

- 3.1 One Designated Partner (DP) is required to be resident in India. The definition of **“Resident in India”** has been changed to include a person who has stayed in India **for a period of not less than 120 days** during the immediately preceding one year **instead of 182 days**.
- 3.2 Every DP of LLP shall obtain Designated Partner Identification Number (DPIN) u/s 153 to 159 of CA, 2013.

4. Section 10 of LLP Act, 2008: Punishment for contravention w.r.t Designated Partners(DP)

- 4.1 The Section has deleted Punishment for contravention of Section 8 which was Liability of DP.
- 4.2 The penalty for contravention of Section 7(1) which is for LLP having 2 DP and one to be Resident Indian. LLP and its every partner shall be liable to a **penalty of Rs.10,000/-** and in case of continuing contravention, with a further penalty of **Rs.100/- for each day** after the first during which such contravention continues, subject to a **maximum of Rs.1 lakh for the LLP and Rs.50,000/- for every partner** of such LLP.
(Now the fine is changed to penalty. The fine was minimum Rs.10,000/- and max Rs.5 Lakh.)
- 4.3 If the LLP fails to file about the appointment of DP then LLP and its every DP shall be liable to a penalty of **Rs.5000/-** and in case of continuing contravention, with a further penalty of **Rs.100/- for each day** after the first during which such contravention continues, subject to a maximum of **Rs.50,000 for the LLP and Rs. 25,000/- for its every DP**.
(Now the fine is changed to penalty. The fine was minimum Rs.10,000/- and max Rs.1 Lakh.)
- 4.4 If the LLP appoints any person as DP who is not eligible or do not fill the vacancy within 30 days, then for such contravenes such LLP and its every partner shall be liable to a penalty of **Rs.10,000/-** and in case of continuing contravention, with a further penalty of **Rs.100/- for each day** after the first during which such contravention continues, subject to a maximum of **Rs.1 lakh for the LLP and Rs.50,000/- for its every partner**.
(This provision is newly inserted)

5. Section 13(4) of LLP Act, 2008: Registered Office of LLP (substituted)

If the LLP and its every partner contravenes the provisions relating registered office and its change therein then, the LLP and its every partner shall be liable to a penalty of **Rs.500/-** for each day during which the default continues, subject to a **maximum of Rs.50,000/-**
(Now the fine is changed to penalty. The fine was minimum Rs.2000/- and max Rs.25,000/-.)

6. Section 15(2)(b) of LLP Act, 2008: Name of LLP (substituted)

No LLP can be registered with any name which in the opinion of Central Government, is identical or too nearly resembles to that of any other LLP or a company or a registered trade mark of any other person under the Trade Marks Act, 1999.

7. Section 17 of the LLP Act, 2008: Change of name of LLP (substituted)

- 7.1 If through inadvertence or otherwise, a company is registered or its new name is registered by a name which is identical with or too nearly resembles the name by which any other LLP or Company or a registered trademark of the proprietor is in existence, then Central Government may direct such LLP to change its name or new name within 3 months of issue of direction. Any Registered Proprietor of a Trade Mark can make an application within 3 years of incorporation or registration or change of name of such LLP.
- 7.2 LLP after change of name or after obtaining new name, give notice to Registrar along with order of Central Government within 15 days and after receipt of fresh Certificate of Incorporation make changes in LLP Agreement.
- 7.3 If the LLP makes default in complying with any direction given by Central Government then the Central Government shall allot a new name to the LLP in such manner as may be prescribed and the Registrar shall enter the new name in the register of LLPs in place of the old name and issue a fresh certificate of incorporation with the new name, which the company shall use thereafter. However nothing shall prevent the LLP from subsequently changing its name in accordance with the provisions of section 16.

8. Section 18 of the LLP Act, 2008: Application for direction to change name in certain circumstances-- omitted.

9. Section 21(2) of the LLP Act, 2008: Publication of name and limited liability (substituted)

If the LLP contravenes the provisions regarding publication of name and limited liability by the LLP, then it shall be liable to pay a penalty of **Rs. 10,000/-**.

(Now the fine is changed to penalty. The fine was minimum Rs.2000/- and max Rs.25,000/-.)

10. Section 25 of the LLP Act, 2008: Registration of changes in partners: (substituted)

10.1 If the LLP contravenes the provisions of Section 25(2) which is regarding filing about appointment, cessation and change in name or address with the Registrar within 30 days then u/s 25(4) the **LLP and its every DP** shall be liable to a penalty of **Rs. 10,000/**.

10.2 If the partner contravenes the provisions of Section 25(1) regarding intimating the LLP about change of his name or address within 15 days of change then u/s 25(5) such **partner** shall be liable to a penalty of **Rs. 10,000/**.

(Now the fine is changed to penalty. The fine was minimum Rs.2000/- and max Rs.25,000/-.)

11. Section 30(2) of the LLP Act, 2008: Unlimited Liability in case of Fraud: (substituted)

If the business is carried on with an intent to defraud creditors of LLP or for a fraudulent purpose, then every person who was knowingly a party to carrying the business of the LLP shall be punishable with imprisonment for a term which may extend to **five years**(earlier two years) and fine not less than Rs. 50,000/- which may extend to Rs.5 lakhs.

12. Section 34 of the LLP Act, 2008: Maintenance of books of account, other records and audit, etc

12.1 Any LLP which contravenes the provisions regarding filing of Statement of Account and Solvency then such **LLP and its DP** u/s 34(5) shall be liable to a penalty of **Rs. 100 for each day** during which such failure continues, subject to a maximum of **Rs. 1 lakh for the LLP and Rs. 50, 000/- for every DP.**

(Now the fine is changed to penalty. The fine was minimum Rs.25, 000/- and max Rs. 5 lakhs and for every DP minimum Rs. 10,000/- and max Rs. 1 lakh.)

12.2 Any LLP which contravenes the provisions regarding maintenance of books of accounts, preparation of Statement of Account and Solvency and audit of accounts then such **LLP** shall be punishable with fine which shall not be less than Rs. 25,000/- but may extend to **Rs. 50 lakhs** and **every DP** of such LLP shall be punishable with fine which shall not be less than **Rs. 10, 000/-** but may extend to **Rs. 1 lakh.**

(This provision is newly inserted)

13. Section 34A of the LLP Act, 2008: Accounting and Auditing Standard: (Inserted)

The Central Government may, in consultation with the National Financial Reporting Authority prescribe the standards of accounting and standards of auditing, as recommended by the Institute of Chartered Accountants of India constituted u/s 3 of the Chartered Accountants Act, 1949.

14. Section 35 of the LLP Act, 2008: Annual Return: (substituted)

Any LLP which fails to file its annual return to the Registrar within 60 days of closure of financial year then, such LLP and its DP shall be liable to a penalty of **Rs. 100/-** for each day during which such failure continues, subject to a maximum of **Rs. 1 lakh for LLP and Rs. 50,000 for DP.**

15. Section 39 of the LLP Act, 2008: Compounding of Offences: (substituted)

- 15.1 The amendment act had allowed Regional Director (RD) or any officer not below the rank of RD authorised by Central Government, can compound offence punishable with fine only under LLP Act, 2008. The amount imposed may be up to the maximum fine prescribed but not less than minimum fine prescribed for the offence.
- 15.2 If an offence committed by a LLP or its partners or its DP is compounded, then a similar offence cannot be compounded within a period of 3 years.
- 15.3 The application for the compounding of an offence shall be made to the Registrar who shall forward the same, together with his comments to the RD or any other officer not below the rank of RD authorised by the Central government.
- 15.4 If the offence is compounded before or after institution of any prosecution, the same is to be intimated to the Registrar within 7 days from the date on which offence is compounded.
- 15.5 If the offence is compounded before institution of any prosecution, then no prosecution shall be instituted for such offence.
- 15.6 If compounding of offence is made after institution of prosecution, then such compounding shall be brought to the notice of Court by the Registrar in writing. After such notice the offender in relation to which the offence is so compounded shall be discharged.
- 15.7 The RD or any other officer not below the rank of RD authorised by the Central Government, while dealing with the proposal for compounding of an offence may, by an order, direct any partner, DP or other employee of the LLP to file or register, or on payment of fee or additional fee as required to be paid under LLP Act, 2008 within such time as may be specified in the order.
- 15.8 If any partner or DP or other employee of the LLP who fails to comply with any order made by the RD or any other officer not below the rank of RD authorised by the Central Government, the maximum amount of fine for the offence, which was under consideration of RD or such authorised officer for compounding under this section shall be **twice the amount provided in the corresponding section** in which punishment for such offence is provided.

16. Section 60(4) of LLP Act, 2008: Compromise or Arrangement of LLP (substituted)

If the LLP contravenes the provisions regarding filing of order of Tribunal with the Registrar within 30 days of the order, then LLP and its every DP shall be liable to a penalty of **Rs. 10,000/-** and in case of continuing contravention, with a further penalty of **Rs. 100/- for each day** after the first during which such contravention continues, subject to a maximum of **Rs. 1,00,000/- for the LLP and Rs. 50,000/- for its every DP.**

(Now the fine is changed to penalty. The fine was max Rs. 1,00,000/-)

17. Section 62(4) of LLP Act, 2008: Provisions for facilitating reconstruction or amalgamation of LLP (substituted)

If the LLP contravenes the provisions regarding filing of the certified copy of the order to the Registrar within 30 days of receipt of order from Tribunal, then LLP and its every DP shall be liable to a penalty of **Rs. 10,000/-** and in case of continuing contravention, with a further penalty of **Rs. 100/- for each day** after the first during which such contravention continues, subject to a maximum of **Rs. 1,00,000/- for the LLP and Rs. 50,000/- for its every DP.**

(Now the fine is changed to penalty. The fine is max Rs. 50,000/-)

The Act further adds an explanation to this section that “property” includes property, rights and powers of every description and “liabilities” includes duties of every description and **LLP shall not be amalgamated with a Company.**

18. Section 67A of the LLP Act, 2008: Establishment of Special Courts: (Inserted)

18.1 The Act has empowered the Central government to **establish or designate Special Courts** with a view to providing speedy trial of offences under the LLP Act.

18.2 The special court will consist of: (i) a Sessions Judge or an Additional Sessions Judge, for offences punishable with imprisonment of three years or more; and (ii) a Metropolitan Magistrate or a Judicial Magistrate, for other offences. They will be appointed with the concurrence of the Chief Justice of the High Court.

If no Special Court designated or established than Courts designated as Special Court u/s 435 of CA, 2013 shall be deemed Special Court for LLP Act, 2008.

Any offence committed under LLP Act, 2008, which is triable by a Special Court shall, until a Special Court is established under LLP Act, 2008 or the CA, 2013, be tried by a Court of Sessions or the Court of Metropolitan Magistrate or a Judicial Magistrate of the first class, as the case may be, exercising jurisdiction over the area.

19. Section 67B of the LLP Act, 2008: Procedure and Powers of Special Courts: (Inserted)

19.1 All offences specified u/s 67A shall be triable by the Special Court established or designated for the area in which the registered office of the LLP is situated where the offence is committed or where there are more than one Special Courts for such area, by any 1 Special Court as specified by the concerned High Court.

19.2 Special Court may try an accused for an offence under LLP Act, 2008 and also an offence under the Code of Criminal Procedure, 1973 in the same trial.

19.3 The Special Court may, try in a summary trial any offence under LLP Act, 2008 which is punishable with imprisonment for a term not exceeding three years. However in case of any conviction in a summary trial, no sentence of imprisonment for a term exceeding 1 year shall be passed by the Special Court.

19.4 If at the commencement or in the course of a summary trial, the Special Court is of the opinion that due to the nature of the case, the sentence of imprisonment shall exceed for a term of one year or it is undesirable to try the case summarily, the Special Court shall, after hearing the parties, record an order to that effect and thereafter recall any witnesses who may have been examined and proceed to hear or re-hear the case in accordance with the procedure for the regular trial.

20. Section 67C of the LLP Act, 2008: Appeals and Revision: (Inserted)

Appeals against the orders of Special Courts will lie with High Courts within the jurisdiction of the Special Court.

21. Section 68A of the LLP Act, 2008: Registration Offices: (Inserted)

21.1 The Central Government for exercising powers and discharging functions as conferred by LLP Act, 2008 or under rules made thereunder for the purpose of registration of LLPs, the Central Government by notification establishes such number of registration offices at such places as it thinks fit, specifying their jurisdiction.

21.2 The Central Government has the authority to appoint Registrars, Additional Registrars, Joint Registrars, Deputy Registrars and Assistant Registrars as it considers necessary, for the registration of LLPs and discharge of various functions under LLP Act, 2008.

22. Section 69 of the LLP Act, 2008: Payment of Additional Fees: (substituted)

22.1 Any document or return required to be registered or filed under LLP Act, 2008 with Registrar, if not registered or filed within the provided time, then it may be registered or filed after the prescribed time, on payment of additional fee as may be prescribed in addition to any fee payable for filing of document or return.

22.2 Such document or return shall be filed after the due date of filing, without prejudice to any other action or liability under LLP Act, 2008.

22.3 However different fee or additional fee may be prescribed for different classes of LLP or for different documents or returns required to be filed under LLP Act, 2008 or rules made thereunder.

23. Section 72(2) of the LLP Act, 2008: Jurisdiction of Tribunal and Appellate tribunal: (substituted)

23.1 Any person aggrieved by an order of Tribunal may prefer an appeal to the Appellate Tribunal. However no appeal shall lie to the Appellate Tribunal from an order made by the Tribunal with the consent of parties.

23.2 Every appeal u/s 72(2) shall be filed within a period of **60 days** (extendable by 60 days) from the date on which the copy of the order of the Tribunal is made available to the person aggrieved and shall be in such form, and accompanied by such fees, as may be prescribed.

(Subsection (3) of section 72 is newly inserted)

23.3 The Appellate Tribunal, on the receipt of an appeal shall, after giving the parties to the appeal an opportunity of being heard, pass such orders as it thinks fit, confirming, modifying or setting aside the order appealed against.

(Subsection (4) of section 72 is newly inserted)

23.4 The Appellate Tribunal shall send a copy of every order made by it to the Tribunal and the parties to the appeal.

(Subsection (5) of section 72 is newly inserted)

24. Section 73 of the LLP Act, 2008: Penalty for non- compliance of any order passed by Tribunal-- omitted.

25. Section 74 of the LLP Act, 2008: General Penalties: (substituted)

If a LLP or any partner or any DP or any other person contravenes any of the provisions of LLP Act, 2008 or the rules made thereunder, or any condition, limitation or restriction subject to which any approval, sanction, consent, confirmation, recognition, direction or exemption in relation to any matter has been accorded, given or granted, and for which no penalty or punishment is provided elsewhere in the LLP Act, 2008, then the LLP or any partner or any DP or any other person, who is in the default, shall be liable to a penalty of **Rs. 5,000/-** and in case of a continuing contravention with a further penalty of **Rs. 100/-** for each day after the first during which such contravention continues, subject to a maximum of **Rs. 1 lakh**.

26. Section 76A of the LLP Act, 2008: Adjudication of Penalties: (inserted)

- 26.1 The Central Government by an order published in the Official Gazette, appoint as many officers of the Central Government, not below the rank of Registrar, as adjudicating officers for the purposes of adjudging penalties under LLP Act, 2008 and specify their jurisdiction;
- 26.2 The Adjudicating Officer by an order:
- impose the penalty on the LLP or its partners or DP or any other person, as the case may be, stating therein any non-compliance or default under the relevant provisions of the LLP Act, 2008.
 - direct such LLP or its partner or DP or any other person, as the case may be, to rectify the default, wherever he considers fit for reasons to be recorded in writing.

Further it is provided that in case default relates to non-compliance filing of Statement of Accounts and Solvency or filing of Annual Return and such default has been rectified either prior to or within thirty days of the issue of the notice by the adjudicating officer then no penalty shall be imposed and proceedings in respect of such default shall be deemed to be concluded.

Also if penalty is payable for non-compliance of any of the provisions of LLP Act, 2008 by a small LLP or a start-up LLP (LLP incorporated under LLP Act, 2008 and recognised as such in accordance with the notifications issued by the Central Government from time to time) or by its partner or DP or any other person in respect of such LLP, then such LLP or its partner or DP or any other person, shall be liable to a penalty which shall be **one-half of the penalty** specified in such provisions subject to a maximum of **Rs. 1 lakh for LLP and Rs. 50,000/- every partner or DP or any other person**, as the case may be.

- 26.3 The Adjudicating Officer to give an opportunity of being heard to LLP or its partner or DP or any other person, who is in default before imposing any penalty.
- 26.4 Any person aggrieved by an order made by the Adjudicating Officer may make an appeal to the Regional Director having jurisdiction in the matter. An appeal shall be filed within a period of 60 days (extendable for 30 days) from the date of receipt of copy of the order made by the adjudicating officer by the aggrieved person.
- 26.5 The Regional Director after giving an opportunity of being heard to the parties of appeal, pass such order as he thinks fit, confirming, modifying or setting aside the order appealed against.
- 26.6 If the LLP fails to comply with the order made by Adjudicating Officer or Regional Director within a 90 days from the date of receipt of the copy of the order, then such LLP shall be punishable with fine which shall not be less than **Rs. 25,000/- but may extend to Rs. 5 lakh**.
- 26.7 Where a partner or DP of LLP or any other person who is in default fails to comply with an order made by Adjudicating Officer or Regional Director within 90 days from the

date of receipt of the copy of the order, then such partner or DP or any other person shall be punishable with **imprisonment which may extend to six months** or with **fine** which shall not be less than **Rs. 20,000/- but may extend to Rs. 1 lakh, or with both.**”.

27. Section 77 of the LLP Act, 2008: Jurisdiction of Court: (substituted)

- 27.1 Subject to the provisions contained in section 67A (Establishment of Special Courts) and section 67B (Procedure and Powers of Special Court) and from the date of establishment or designation of Special Courts under this LLP Act, 2008—
- (i) the Special Court shall have jurisdiction and power to impose punishment in case of fraud; and
 - (ii) the criminal cases against the LLP or its partners or DP or any other person in default filed under LLP Act, 2008 and pending before the court of Judicial Magistrate of the first class or Metropolitan Magistrate, as the case may be, shall be transferred to the Special Court.
- 27.2 Section 77A: Only Special Courts shall take cognizance of any offence punishable under LLP Act, 2008 or the rules on a complaint in writing made by the Registrar or by any officer not below the rank of Registrar duly authorised by the Central Government.

28. Section 79(2) of the LLP Act, 2008: Power to make rules: (substituted)

Central Government shall have the following powers:

1. To prescribe the amount of contribution and turnover for small LLP;
2. To prescribe the terms and conditions for small LLP;
3. To give authority to allot new name to the LLP who does not comply with the direction of the Central Government regarding rectification of name;
4. To specify the persons to whom LLP can issue debentures, the form and manner to maintain register of debenture holders, the manner to create debenture redemption reserve account and the information, documents and return of allotments to be filed with the Registrar by the LLP. (These powers conferred under Section 33A regarding Debentures. However Section 33A is yet to be proposed);
5. To prescribe standards of accounting and auditing;
6. To prescribe the powers and duties to be discharged by the Registrars and the terms and conditions of their service;
7. To prescribe the payment of additional fee for filing of document or return and the payment of different fee or additional fee;
8. To prescribe the form and fee for filing appeal to the Appellate Tribunal;
9. To prescribe the manner for appointing Adjudicating Officers for adjudicating penalty and to prescribe the form and fee for filing appeal against the order made by Adjudicating Officer;
- 9.1 To prescribe any other matter which is already prescribed or may be prescribed or for which provisions are to be made in the rules.

29. Section 80 (1A) of the LLP Act, 2008: Power to remove difficulties: (inserted)

If there is any difficulty in giving effect to the provisions of LLP Act, 2008 as amended by the Limited Liability Partnership (Amendment) Act, 2021, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of LLP Act, 2008 for removing the difficulty. However no such order shall be made after the expiry of 3 years from the date of commencement of the Limited Liability Partnership (Amendment) Act, 2021.

30. Section 81 of the LLP Act, 2008: Transitional Provisions-- omitted.

Advantages of LLP: LLPs can now also be registered with manufacturing and allied activity which has motivated more incorporation of LLPs. LLPs has lower compliances compared to a company and it is also easier to incorporate.

Some of the differences between LLP & a Private Limited Company are as follows:

SR No.	Points of Difference	Limited Liability Partnership	Private Limited Company
1	Number of members	The number of members required for incorporation of LLP is two and there is no maximum limit on number of members in Limited Liability Partnership.	The numbers of members to start a Private Limited Company is also two; however the maximum number in Private Company is 200.
2	Applicability	Limited Liability Partnership Act 2008 governs a LLP.	The Private Company is guided by the provisions of the Companies Act 2013.
3	Compliances	The cost of statutory compliances is less in LLP.	The cost of statutory compliances is more in the company.
4	Registering Authority	The registering authority in the LLP is the registrar of the LLP, and the cost of LLP registration is less.	The registering authority for the company is the registrar of the company (ROC). The cost of Private Limited Company registration is more when compared to LLP.
5	Taxation Benefit	<ul style="list-style-type: none">• Wealth tax and the surcharge is not applicable.• The dividend distribution	<ul style="list-style-type: none">• Wealth tax is charged at 1%, and the surcharge is applicable when

		<p>tax is also not applicable.</p> <ul style="list-style-type: none"> • A loan to partners is not taxable. • Exemption of tax can be claimed in case of money spend for the benefit of the employees. • The rate of minimum alternative tax is uniform. 	<p>taxable income exceeds 1 crore.</p> <ul style="list-style-type: none"> • The dividend distribution tax is applicable. • A loan to the director is taxable and considered as deemed dividends. • There is no exemption of tax in case money used for the benefit of the employees. • The rate of minimum alternative tax is not uniform.
6	Transferability	The shares can be transferred only by executing a written agreement before the notary public in the case of LLP.	There is no agreement between the shareholders binding either on the company or on the shareholders. The transfer of shares can only be restricted by AOA.