

Ministry of Corporate Affairs

Explanatory Memorandum to Concept Limited Liability Partnership Rules in relation to establishment of place of business in India by Foreign LLPs

The LLP Bill, 2006 was introduced in the Rajya Sabha on 15th December, 2006 and was referred to the Parliamentary Standing Committee on Finance. The Hon'ble Standing Committee submitted its report on 27th November, 2007. Taking into consideration the suggestions of the Standing Committee, the revised Bill, namely the Limited Liability Partnership Bill, 2008 was introduced in the Rajya Sabha on 21st October, 2008. Simultaneous to the introduction of LLP Bill, 2008, on 21st October, 2008, the LLP Bill, 2006 was withdrawn from Rajya Sabha. The LLP Bill, 2008 was considered and passed by Rajya Sabha on 24th October, 2008 and by the Lok Sabha on 12th December, 2008. The Bill is awaiting Presidential assent. The LLP Bill, 2008 as introduced in the Parliament is available on this Ministry's website at www.mca.gov.in.

2. In order to enable the comprehensive framework for regulation of LLPs to be viewed by stakeholders, it was decided that the provisions of the Bill and the Concept Rules may be viewed together. This would enable the Government to finalize the relevant subordinate legislation

expeditiously when required. In this background, keeping in view the provisions of the LLP Bill, 2008, the following Concept Rules were prepared and placed by this Ministry on its website for public comments:-

- (i) The LLP (Concept) Rules and Forms
- (ii) The Concept LLP (Winding up and Dissolution) Rules

3. The concept rules in respect of provisions of the LLP Bill, 2008 relating to establishment of a place of business in India by Foreign LLPs were not included in the above two sets of Concept Rules. These have now been prepared and placed on the Ministry's website for public comments. Suggestions/comments on these concept rules alongwith the justification in brief may be addressed/sent latest by 23rd January, 2009 to Shri B.N. Harish, Joint Director (Inspection) or Shri N.K. Dua, Assistant Director, M/o Corporate Affairs, 5th Floor, A Wing, Shastri Bhavan, New Delhi. The suggestions/comments may also be sent through email at bn.harish@mca.gov.in or narendra.dua@mca.gov.in. It will be appreciated if the name and address of the sender is also indicated at the time of sending suggestions/comments.

CHAPTER XI
FOREIGN LIMITED LIABILITY PARTNERSHIP

Section 59

34(1) On establishing a place of business in India, a foreign limited liability partnership shall, within thirty days thereof, file with the Registrar in form 30—

- (a) a copy of the certificate of incorporation or registration and other instrument(s) constituting or defining the constitution of the limited liability partnership;
 - (b) the full address of the registered or principal office of the limited liability partnership;
 - (c) the full address of the office of the limited liability partnership in India which is to be deemed as its principal place of business in India; and
 - (d) list of partners and designated partners, if any, and the name and address or the names and addresses of one or more persons resident in India, authorized to accept on behalf of the limited liability partnership, service of process and any notices or other documents required to be served on the limited liability partnership.
- (2) (i) If the limited liability partnership is incorporated in any country which is a part of the Commonwealth, the copy of the document referred to in sub-rule (1) shall be certified as a true copy -
- (a) by an official of the Government to whose custody the original of the document is committed ;or
 - (b) by a Notary (Public) in that Part of the Commonwealth; or
 - (c) by an officer of the limited liability partnership, on oath before a person having authority to administer an oath in that part of the Commonwealth.

(ii) If the Limited Liability Partnership is incorporated in a country that falls outside the Commonwealth but is a party to the Hague Apostile Convention, 1961 -

(a) The copy of the documents referred to in sub-rules (1) shall be certified by an official of the Government to whose custody the original is committed and be duly apostilled in accordance with Hague Convention;

(b) a list of the partners and designated partners of the LLP, if any, the name and address of persons resident in India, authorized to accept notice on behalf of the Limited Liability Partnership shall be duly notarized and be apostilled in the country of their origin in accordance with Hague Convention.

(iii) If the limited liability partnership is incorporated in a country outside the commonwealth and is not a party to the Hague Convention, the copy of the incorporation documents referred in sub-rule (1) shall be certified -

- (a) by an official of the Government to whose custody the original is committed ; or
- (b) a Notary (Public) of such country ; or
- (c) by an officer of the limited liability partnership.

The signature or seal of the official referred to in sub clause (a) of clause (iii) or the certificate of the Notary (Public) referred to in sub clause (b) of that clause shall be authenticated by a diplomatic or consular officer empowered in this behalf under section 3 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948 (XL of 1948), or where there is no such officer, by any of the officials mentioned in section 6 of the Commissioners of Oaths Act, 1889 (52 and 53 Vic. C. 10), or in any Act amending the same.

The certificate of the officer of the limited liability partnership referred to in sub clause (c) of clause (iii) shall be signed before a person having authority to administer an oath as provided under section 3 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948 (XL of 1948), or as the case may be, by section 3 of the Commissioners of Oaths Act, 1889 (52 and 53 Vic, C. 10) the status of the person administering the oath in the latter case being authenticated by any official specified in section 6 of the Commissioners of Oaths Act, 1889 (52 and 53 Vic. C. 10) or in any Act amending the same.

(3) (i) If any alteration is made or occurs in—

(a) The instrument constituting or defining the constitution of a foreign limited liability partnership; or

(b) the registered or principal office of a foreign limited liability partnership outside India; or

(c) the partner or designated partner, if any, of a foreign limited liability partnership;

the Limited Liability Partnership shall file in form 31 such alterations with the Registrar within sixty days of the close of the financial year.

(ii) If any alteration is made or occurs in-

(a) the certificate of incorporation; or

(b) the name or address of any of the persons authorized to accept service on behalf of a foreign limited liability partnership in India; or

(c) the principal place of business of the limited liability partnership in India;

the Limited Liability Partnership shall file in form 32 such alterations with the Registrar within thirty days from the date on which the alteration was made or occurred.

(4) Every foreign limited liability partnership shall file the Statement of Account and Solvency drawn in accordance with section 34 of the Act and rule 24, in form 8, within a period of 30 days from the end of six months of the financial year, with the Registrar.

(5) (i) If any such document as is mentioned in sub-rule (1), (3) or (4) is not in the English language, there shall be annexed to it a certified translation thereof.

(ii) Translation into English of documents required to be filed with the Registrar in pursuance of sub rule (1), (3) or (4) shall be certified to be correct as provided in clause (iii) or clause (iv), as the case may require.

(iii) Where any such translation is made outside India, it shall be authenticated in the manner specified in rule (2) above

(iv) Where such translation is made within India, it shall be authenticated-

(a) by an advocate, chartered accountant, company secretary or cost accountant; or

(b) by any affidavit of some person having, in the opinion of the Registrar, adequate knowledge of the language of the original and of English.

(6) Every foreign limited liability partnership shall cause the name of the foreign limited liability partnership and of the country in which the limited liability partnership is incorporated, to be stated in legible English characters in all invoices, official correspondence and publications of the limited liability partnership.

(7) (a) where any such limited liability partnership makes default in delivering to the Registrar the name and address of a person resident in India who is authorized to accept on behalf of the limited liability partnership service of process; notices or other documents; or

(b) if at any time all the persons whose names and addresses have been so delivered are dead or have ceased so to reside, or refuse to accept service on behalf of the limited liability partnership or for any reason, cannot be served;

a document may be served on the limited liability partnership by leaving it at, or sending it by post to, any place of business established by the limited liability partnership in India.

(8) If any foreign limited liability partnership ceases to have a place of business in India, it shall give notice to the Registrar in Form No 32 within 30 days of its intention to close the place of business and as from the date on which notice is so given, the obligation of the limited liability partnership to file any document to the Registrar shall cease, provided it has no other place of business in India and it has filed all the documents due for filing as on the date of the notice.

(9) Every document which is required to be filed by any foreign limited liability partnership shall be filed in the electronic form to the Registrar having jurisdiction over New Delhi, through the portal maintained by the Ministry of Corporate Affairs on its website www.mca.gov.in.

(10) There shall be paid to Registrar for filing or delivery or registering any form or document required by this Chapter the fee as mentioned in Annexure 'B'

FORM 30

Form for particulars of foreign limited liability partnership
[pursuant to sub rule (1) of rule 34 of the limited Liability Partnership General Rules and Forms_____.]

1. Name of the limited liability partnership :

2. Country where the foreign limited liability partnership is incorporated

3. State of principal place of business in India

4. Date of establishment of principal place of business in India

5. Full address of the registered or principal office of the foreign limited liability partnership

Line 1
Line 2
City District
State PIN Code
Country

6. Full address of the office of the limited liability partnership in India which is deemed as its principal place of business in India

Line I
Line II
City State
Pin
Phone Fax
Email ID
Website

7. List of persons resident in India and authorised to accept on behalf of the limited liability partnership service of process and any notices or other documents required to be served on the limited liability partnership;

Number of person authorized [drop down]

Particulars of person authorized

1. Income Tax permanent account number(PAN)

Name of person resident in India authorized to accept on behalf of the foreign limited liability partnership

Surname

Father's / Husband's Name:

Designation:

Nationality:

Where the Nationality of origin is different from the above mentioned nationality,

Nationality of origin:

Date of birth :

Others (specify)

If already a partner of partnership firm or limited liability partnership or director of a company, specify the following:

No. of partnership firms in which he is a partner Dropdown

Names & address of the partnership firm(s)

Name:

Address of principal office:

No. of limited liability partnership(s) in which he is a partner Dropdown

LLPIN and name of the limited liability partnership(s)

LLPIN Name of limited liability partnership

No. of Company(ies) in which he is a director Dropdown

DIN

Name and CIN of the Company(ies)

CIN Name of Company

Permanent residential address

Address Line I

Line II

City State

Pin ISO Country Code

Phone Fax

Email ID

Whether present residential address is same as the permanent address

Yes No

Present residential address

Line I

Line II

City State

Pin ISO Country Code

Phone Fax

Email ID

8. List of partners & designated partners, if any,-

Number of partners

Number of designated partners, if any

Particulars of partners;-

Present Name

First name :

Last name :

Middle name :

Former Name(if any)

First name :

Last name :

Middle name :

Father's / Husband's Name :

Nationality :

Where the Nationality of origin is different from the above mentioned nationality,

Nationality of origin:

Date of birth :

Business Occupation :

Others (specify)

Whether designated partner yes/No

Usual residential address

Address Line I

Line II

City State

Pin ISO Country Code

Phone Fax

Email ID

Whether nominee of a body corporate Yes No

(i) Name of the body corporate

(ii) Address of registered or principal office of the body corporate

Line I

Line II

City		State	
Pin	<input type="text"/>	ISO Country Code	<input type="text"/>
Phone	<input type="text"/>	Fax	<input type="text"/>
Email ID	<input type="text"/>		
Website	<input type="text"/>		

Attachments

- 1. Copy of the Incorporation document or other instrument constituting or defining the constitution of the limited liability partnership certified in the manner specified in the sub rule 2.**
- 2. If the above instrument is not in English then the translated version of the documents, certified in the manner specified in the sub rule 5.**
- 3. Power of attorney in favour of authorized representative**
- 4. Optional Attachment**

Verification

To the best of my knowledge and belief, the information given in this form and its attachments is correct and complete.

I have gone through the provisions of the Limited Liability Partnership Act, 200—and the rules framed there under in respect of establishment of place of business by a foreign Limited Liability Partnership.

I am authorised to sign and submit this form.

To be digitally signed by:

Authorized representative of foreign limited liability partnership

FORM 31

Return of alteration in the (A) the incorporation document, or other instrument constituting or defining the constitution of a foreign limited liability partnership; or (B) the registered or principal office of a foreign limited liability partnership; or (C) the partner or designated partner if any of a foreign limited liability partnership;

[pursuant to sub rule (3) & (9)of rule 34 of the limited Liability Partnership General Rules and Forms _____]

Name of the Foreign LLP:

Country where the Foreign LLP is incorporated

Financial year ended on

_____ a Foreign LLP having established a place of business in India at _____ hereby gives you notice and delivers the under mentioned return of alteration in –

(A) the incorporation document, or other instrument constituting or defining the constitution of a foreign limited liability partnership;

A brief description of the alteration is given hereunder:

As per decision taken by LLP on _____ Shri _____ was authorised to file this alteration with the Registrar.

[Certified copy of the decision and/or the copy of the amended document should be enclosed. If the decision is not in English, a certified translation thereof must accompany the return.]

(B) the registered or principal office of a foreign limited liability partnership

The registered/principal office of the LLP in the country of incorporation has been shifted from _____ to _____ with effect from _____

(c) the partner or designated partner of a foreign limited liability partnership;

(i) partner/designated partner of the LLP (if individual)

Name and surname in full	Usual residential address, email ID	Nationality	Business occupation or if these is no business occupation, particulars of other partnership/directorships held, if any	Remarks as to alteration

(ii) partner/designated partner of the LLP (if bodies corporate)

Corporate Name	Registered office or principal office of body corporate	Names of directors/partners of body corporate		Remarks as to alteration
		Full name and address of each director or partner	Nationality of each director or partner and nationality of origin if different from present nationality	

Attachments

- 1. Copy of the decision or other document through which alteration has been made**
- 2. If the above instrument is not in English then the translated version of the documents, certified in the manner specified in the sub rule 5.**
- 3. Power of attorney in favour of authorized representative**
- 4. Optional Attachment**

Verification

To the best of my knowledge and belief, the information given in this form and its attachments is correct and complete.

I have gone through the provisions of the Limited Liability Partnership Act, 200—and the rules framed there under in respect of establishment of place of business by a foreign Limited Liability Partnership.

I am authorised to sign and submit this form.

To be digitally signed by:

Authorized representative of foreign limited liability partnership

FORM 32

Return of (A) Alteration in the name or address of any of the persons authorized to accept service on behalf of a foreign limited liability partnership; (B) Alteration in the principal place of business of the limited liability partnership in India; or (C) Cessation to have place of business in India

[pursuant to sub rule (4) and sub-rule (11) of rule 34 of the limited Liability Partnership General Rules and Forms _____]

Name of the Foreign LLP:

Country where the Foreign LLP is incorporated

The above mentioned Foreign LLP having established a place of business in India at _____ hereby gives notice –

(A) of the alteration in the names and addresses of persons resident in India authorized to accept service on behalf of the foreign limited liability partnership:

(1)

Present name and surname in full	Usual residential address	Remarks as to alteration (give date)

(2) Date of alteration

(B) of the alteration in the address of principal place of business of the foreign limited liability partnership in India:

(1) The principal place of business in India was shifted from _____ to _____ with effect from _____

(2) Date of alteration

(C) (1) that it intends to close its place of business in India at the following places--

Address _____

(2) Date of intention to close

(3) That the LLP is not maintaining the place of business at any other place in India.

(4) That the LLP has filed with the Registrar all documents due for filing.

Attachments

- (a) **Copy of the decision or other document through which alteration has been made**
- (b) **If the above instrument is not in English then the translated version of the documents, certified in the manner specified in the sub rule 5.**
- (c) **Power of attorney in favour of authorized representative**
- (d) **Optional Attachment**

Verification

To the best of my knowledge and belief, the information given in this form and its attachments is correct and complete.

I have gone through the provisions of the Limited Liability Partnership Act, 200—and the rules framed there under in respect of establishment of place of business by a foreign Limited Liability Partnership.

I am authorised to sign and submit this form.

To be digitally signed by:

Authorized representative of foreign limited liability partnership

ANNEXURE 'B'

6. Fee for filing of form or Statement or return or notice or document by foreign
LLP

- | | | |
|-----|---|-----------|
| (a) | For filing documents under Rule 34(1) | Rs.5000/- |
| (b) | Any other form or Statement or return or notice or document | Rs.1000/- |