

## REPORT

The Limited Liability Partnership Bill, 2006 was introduced in the Rajya Sabha on 15 December, 2006 and was referred to the Standing Committee on Finance on 27 December, 2006 by the Hon'ble Speaker, in consultation with Chairman, Rajya Sabha for examination and report thereon.

2. The Committee invited memoranda/suggestions regarding the Limited Liability Partnership Bill, 2006 from professional bodies and Chambers of Commerce and Industry *viz.* the Institute of Chartered Accountants of India (ICAI), the Institute of Company Secretaries of India (ICSI), the Institute of Cost and Works Accountants of India (ICWAI), the Federation of Indian Chambers of Commerce and Industries (FICCI), the Confederation of Indian Industries (CII), the PHD Chamber of Commerce and Industries (PHDCCI) and Associated Chambers of Commerce and Industries (ASSOCHAM) and also heard the views of their representatives.

3. The professional bodies and the Chambers of Commerce and Industry, have, in general, welcomed the Limited Liability Partnership Bill, 2006.

4. The Committee also took evidence of the representatives of the Ministry of Corporate Affairs in connection with examination of the Bill.

### A. GENESIS OF THE BILL

5. In India, the need for legislation to provide for Limited Liability Partnerships (LLPs) has been highlighted from time to time by various Committees and Expert Groups, *viz.* Bhat Committee (1972), Committee to examine the adequacy of Institutional credit to SSI sector and related aspects (Nayak Committee, 1992), Expert Committee on Small Enterprises (Abid Hussein Committee, 1997) and Dr. S.P. Gupta Study Group on Development of Small Scale Enterprises, 2001.

6. In the recent past, the need for a separate legislation for LLPs has been recommended by the Committee on Regulation of Private Companies and Partnerships headed by Shri Naresh Chandra (2003) and Dr. J. J. Irani Committee on new Company Law (2005).

7. The LLP structure is also found in USA, Australia, Japan and in some of the Gulf countries like Dubai (United Arab Emirates). In addition, the European Union also recognizes the concept of LLP. The UK enacted LLP Act in the year 2000 and Singapore enacted their LLP Act in the year 2005. In countries, such as the UK, USA, Australia, Singapore, etc., the law is said to have proved to be of immense use to professionals and small enterprises.

### **Advantages of LLP**

8. The Limited Liability Partnership is envisaged to be a corporate form distinct from a joint stock company set up under the Companies Act, 1956 as well as a partnership firm set up under the Partnership Act 1932. The basic difference between an LLP and a joint stock company centers on the fact that while the internal governance structure of a company is regulated by statute (the Companies Act, 1956), for an LLP, it would be by way of a contractual agreement among partners. At the same time, the LLP provides a shield to the partners from the joint and several liability as would arise under the traditional partnership form. As a hybrid form of business structure distinct from a company or a partnership, the LLP is perceived to offer the following advantages:

- (i) LLP would be a new business/profession vehicle which will give the organizational flexibility to the partners of the LLP (governed through an agreement);
- (ii) The partners of an LLP will have the advantage of combining themselves in a body corporate form having separate legal entity and perpetual succession leading to growth of professional expertise and entrepreneurial initiative in a flexible, innovative and efficient manner.
- (iii) There will not be any dependence on the Statute for determining the internal working arrangements of an LLP;
- (iv) The partners of an LLP would be able to modify their working arrangement (by making suitable changes in the agreement) to suit their business model and risk and reward profile;
- (v) LLP framework would suit various kinds of service enterprises taking into account the fact that the services are changing and evolving over time. Services in sectors like hospitality, tourism, information technology, human resource development, creative art and decorative art etc., are expected to grow in coming times;

- (vi) Venture Capital and technology based enterprises are expected to find the LLP structure very useful;
- (vii) Combination between two enterprises to build synergy between their respective expertises would be possible.
- (viii) Small enterprises would find the desirable flexibility and ease of compliance in the LLP structure.

**9. Having examined all aspects of the Limited Liability Partnership Bill in detail, the Committee recommend consideration of the Bill, subject to the modifications/additions suggested in this report. The Limited Liability Partnership is an alternative corporate business vehicle that gives the benefits of limited liability but allows its members the flexibility of organizing the internal structure of the entity as a partnership based on an agreement. The Committee's examination of the Bill reveals certain grave lacunae and serious infirmities in the Bill. Certain key issues which are likely to impact the effectiveness of the proposed legislation have also been brought to the fore. These are discussed in the subsequent sections of the report.**

## **B. DEFINITIONS**

### **Clause 2**

10. Clause 2 of the Bill defines various expressions used in the Bill for the purposes of certainty in the interpretation of the proposed legislation.

#### **(i) Definition of business**

11. Clause 2(d) defines the term 'business' as follows:

2(d) 'business' includes every trade, profession and occupation;

12. Emphasizing on defining the term 'business' in clear and unambiguous terms, the Institute of Company Secretaries of India (ICSI), made the following suggestion before the Committee:

"To make the definition clear, inclusive and unambiguous, it is suggested to include the term 'service' within the definition of 'business'. Accordingly, Clause 2(d) may be re-drafted as follows:

'business' includes every trade, profession, service and occupation."

13. Expressing agreement with the suggestion for making the definition of the term more 'inclusive', the Ministry in a written reply, informed:

"The suggestion is taken note of. The definition of the term 'business' would be reviewed to make it inclusive of activities of as wide a range as possible."

**(ii) Definition of Limited Liability Partnership Agreement**

14. Clause 2(l) defines "limited liability partnership agreement" as:

"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 limited liability partnership."

15. A suggestion made by the Institute of Company Secretaries of India (ICSI) on the definition proposed under the Clause reads:

"To make the clause more explicit, the word that may be inserted in the last line before the words 'limited liability partnership'; and the redrafted sub-clause may read as:

'limited liability partnership agreement' means any written agreement between the partners of the limited liability partnership or between the limited liability partnership as its partners which determines the mutual rights and duties of the partners and their rights and duties in relation to that limited liability partnership."

16. Asked to give their response on the suggestion, the Ministry of Corporate Affairs , in a written reply stated:

"the suggestion is noted to be addressed appropriately with legislative vetting."

**(iii) Definition of partner**

17. Clause 2(n) states as follows:

"partner, in relation to a limited liability partnership, means any person who has been admitted as a partner in the limited liability partnership in accordance with the limited liability partnership agreement."

18. In regard to definition of the term, 'partner' as proposed, the Institute of Company Secretaries of India made the following suggestion:

"The principle of holding out/estoppel may be included. Where a person who is not a partner, represents himself as a partner or permits himself to be represented as a partner, such a person should be deemed to be a partner and made liable to the person who has given credit to the LLP or entered into an agreement with LLP on the faith of such representation."

19. In response to a related query, the Ministry of Corporate Affairs, in their written reply, stated as below:

"Clause 27 of the Bill indirectly addresses the concept of 'partner by holding out'. However, the suggestion for including a specific provision for bringing this concept in the Bill more clearly is taken note of".

**(iv) Definition of "Entity" under Clause 2**

20. The term 'Entity' occurs under the provisions of Clause 18 which deal with the application that could be made by an LLP for issuing a direction 'to change a name in certain circumstances' and also in the provisions under various clauses in Chapter IX of the Bill on 'Investigation' viz., Clauses 45, 46, 48, 49 and 51.

21. Expressing the need for providing clarity in respect of the Clauses where the term 'entity' occurs, the ICSI, in their memorandum, suggested that the term needed to be defined under Clause 2 by including therein, 'a partnership firm under the Indian Partnership Act, 1932'. The Ministry of Corporate Affairs, in response to a related query informed that the suggestion has been taken note of to be addressed appropriately.

**22. In order to ensure unambiguous interpretation of terms, the Committee suggest that, as agreed to by the Ministry of Corporate Affairs, the following refinements be made in the 'definitions' in Clause 2 of the Bill:**

— **Clause 2 (d): 'business'**

**The Definition of the term 'business' be expanded to cover a wide range of activities such as services, as may be specified, so as to make it more inclusive.**

— **Clause 2(l): ‘Limited Liability Partnership Agreement’**

The word ‘that’ be inserted before the words ‘limited liability partnership’ in the last line of the definition to make the sub-clause more explicit.

— **Clause 2 (n): ‘Partner’**

A specific provision be included to bring out more clearly the concept of ‘partner by holding out’/estoppel.

— **The term ‘entity’ which occurs in Clause 18 and some other Clauses be defined to include a partnership firm registered under the Indian Partnership Act, 1932.**

### C. APPLICABILITY

#### **Grounds for Disqualification of Partners and Identification Number**

23. Clause 5 seeks to provide that an individual or a body corporate may become a partner in an LLP and also deals with the requirement of obtaining a Partner Identification Number from the Central Government by every Designated Partner.

24. Clause 5 reads as under:

“5(1) Any individual or body corporate may be a partner in a limited liability partnership.

(2) Every designated partner of a limited liability partnership shall obtain a Partner Identification Number (PIN) from the Central Government and the provisions of Sections 266A to 266G (both inclusive) of the Companies Act, 1956 shall apply *mutatis mutandis* for the said purpose.”

25. Sec. 266A to 266G of the Companies Act deal with Director Identification Number (DIN) and obligations governing DIN.

26. Pointing out that contractual capacity was a prerequisite to enter into a limited liability partnership agreement, the ICSI has emphasized that a person who may have applied to be adjudged an insolvent or who is declared by a court to be of unsound mind, should be disqualified to be a partner of the limited liability partnership. The ICSI has also suggested that the grounds of disqualification of the partner be specified in the Act.

27. Responding to the suggestion, the Ministry of Corporate Affairs, have stated, in their written reply that the suggestion is noted to be addressed appropriately with legislative vetting. As regards the grounds for disqualification of a designated partner, the Ministry of Corporate Affairs in a written note informed that the same will be prescribed through rules to be framed under the provisions of sub clause (4) of Clause 7.

28. It is observed in this connection that in the Companies Act, 1956, the grounds for disqualifications of directors have been specified in the Act itself in Sec. 274.

29. Further, with specific reference to the provisions of Clause 5(2), whereby designated partners will be required to obtain a Permanent Account Number (PAN), a suggestion received from the ICSI reads as under:

“The Clause requires every designated partner of a limited liability partnership to obtain Partner Identification Number (PIN) from the Central Government and the provisions of sections 266A to 266G of the Companies Act, 1956 shall apply *mutatis-mutandis*.”

Since limited liability partnership administration will be under the regime of the Ministry of Company Affairs (the MCA) which is already managing the allocation of DIN, designated partners having DIN may be exempted from obtaining separate PIN. For the purpose of allocation of PIN in such cases, information from respective DIN may be obtained. This is in order to make the procedure simple and non-repetitive. The Clause may therefore be re-drafted accordingly.”

30. When asked to express the Government’s perception on the need felt for exempting designated partners possessing DIN from obtaining a separate PIN, the Ministry, in reply stated as under:

“The Director Identification Number (DIN) which has been introduced in the Companies Act, is a legal requirement for all company directors and is intended to provide information in the public domain about directors of the company, their relationship with other companies and to provide a personal data base to enable regulatory agencies to enforce liabilities of the directors under the Law. It also serves as a data base to track directors of companies that may raise funds from the public and thereafter vanish.

‘Permanent Account Number’ (PAN) issued by Income Tax Department is a reference and identity check for the purposes of taxation.

In the same manner, the Partner Identification Number (PIN) will be mandatory only for Designated Partners of an LLP. Such Designated Partners may or may not be directors of a company. In the case of small LLPs, the Designated Partner may not even be an income tax assessee. Therefore, mandating a DIN or a PAN for a Designated Partner in a LLP as a legal requirement may not be appropriate.

However, it may be possible to make use of the data available under DIN for the purposes of a PIN or co-relate DIN with PIN subject to technical feasibility. The overall intention in the exercise would be to facilitate ease of compliance.”

**31. The Committee desire that as agreed to by the Ministry of Corporate Affairs the grounds for disqualification of a partner in LLP be specified in the Act itself.**

**32. The Committee note that the Ministry of Corporate Affairs have agreed with the suggestion made by the Institute of Company Secretaries of India (ICSI) that in so far as designated partners already having a ‘Director Identification Number’ (DIN) is concerned, the data available under DIN may be made use of for allotment of Partner Identification Number. The Committee hope that suitable instructions will be issued in this regard soon after the enactment of this legislation.**

#### **Clause 7—Minimum number of designated partners**

33. Clause 7 reads as under:

“7.(1) Every limited liability partnership shall have at least two designated partners who are individuals and at least one of them shall be a resident in India:

Provided that in case of a limited liability partnership in which all the partners are body corporates, at least two partners shall nominate their respective individuals who are to act as ‘designated partners’ and one of the nominees shall be a resident in India.

(2) For the purpose of this section, ‘resident in India’ means a person who has stayed in India for a period of not less than one hundred and eighty-two days during the immediately preceding one year.”

34. On the issue of the minimum number of designated partners, an LLP should necessarily have as per the stipulations of Clause 7(1), the ICSI, in their written memorandum submitted as follows:

“Clause 7 provides for appointment of at least two designated partners who are individuals. It also provides that in case of a limited liability partnership in which all partners are body corporates, at least two partners shall nominate their respective individuals to Act as designated partners. However, the Clause does not address a situation where a limited liability partnership comprises of both individuals as well as body corporates. For example, if a limited liability partnership is formed with one individual and two body corporates then it would not be possible to comply with the provisions of Clause 7 for it cannot have two designated partners who are individuals. It would therefore, violate the requirements of the Act from the very beginning. It is, therefore, suggested that the first proviso, may be substituted as below:

“Provided that in case of a limited liability partnership in which one or more partners are individuals and body corporates, at least two partners who are individuals or nominees of body corporates shall act as designated partners.”

35. Asked to respond to this suggestion, the Ministry of Corporate Affairs, in their written submission stated as follows:

“The suggestion appears to be made to address situations where an LLP comprises of a mix of individual and body corporates and is taken note of. It may be addressed by providing that in case of a limited liability partnership in which one or more partners are individuals and body corporates, at least two partners who are individuals or nominees (individuals) of body corporates shall act as designated partners. This would ensure that at least two of the designated partners are individuals. However, the necessary provision may be made after suitable legal vetting.”

36. With reference to the provisions of Clause 7(2), whereby one of the ‘designated partners’ is to be a resident of India, who would mean to be a person ‘who has stayed in India for a period of not less than one hundred and eighty-two days’, the ICAI have *inter-alia* expressed the need for clarity on when the preceding year, as stipulated would commence from. The related submission made by the ICAI reads as under:

“The term preceding one year needs to be clarified that whether preceding one year is to be seen from the end of the financial year of LLP or from the commencement of it.”

37. While furnishing their views on this suggestion, the Ministry of Corporate Affairs in reply, stated as follows:

“The term ‘year’ has not been defined in the LLP Bill. Intention is to ensure that one of the designated partners is resident in India for 182 days during the last year. However, the possibility of the word ‘year’ used in this clause being defined to mean ‘financial year’ may be considered.”

38. The proviso to Clause 7(3) of the Bill envisages nomination of individuals to act as ‘designated partners’ in the case of an LLP in which all partners are body corporates. The proviso, however, does not deal with a situation where an LLP comprises a mix of individuals and body corporates. The Committee desire that, as agreed to by the Ministry of Corporate Affairs, a suitable provision be made in the Bill by amending the Clause to address this situation.

39. The term ‘year’ used in Clause 7(2) of the Bill has not been defined. It is not clear whether it refers to a calendar year or financial year. The Ministry of Corporate Affairs have proposed to define the term as ‘financial year’. Since the term is used in the context of the period of residency of an individual in India, the Committee desire that the term be defined suitably keeping in view the definition used in similar context in other statutes.

#### **Clauses 8 and 9—Appointment of designated partners arising out of vacancy**

Clauses 8 and 9 (1) of the Bill read as follows:

“8(1) If the incorporation document specifies as to who are to be designated partners:

- (a) such persons shall be the designated partners on incorporation; and
- (b) any partner may become a designated partner by and in accordance with limited liability partnership agreement and a partner may cease to be a designated partner in accordance with the limited liability partnership agreement.

(2) A limited liability partnership may appoint a designated partner within thirty days of a vacancy arising for any reason:

Provided that if no designated partner is appointed, or if at any time there is only one designated partner, each partner shall be deemed to be a designated partner.

(3) If the incorporation document states that every person who from time to time is a partner of the limited liability partnership is a designated partner, every partner shall be designated partner.”

“9(1) Every limited liability partnership shall appoint an individual (who is resident in India) as designated partner within thirty days from the date on which a person ceases to be a designated partner and the provisions of sub-section (3) and sub-section (4) of section 7 shall apply in respect of the new partner.”

40. On the issue of appointment of designated partners in case of a vacancy the following suggestion has been received from the ICSI:

“The sub-clause 2 of Clause 8 defines appointment of designated partner arising out of vacancy for any reason. It may be noted that Clause 9(1) also deals with changes in designated partners, and appears repetitive. Accordingly, it is suggested that the sub-clause (2) under Clause 8 may be deleted and the same sub-clause 8(2) may be put under Clause 9(1) in place of existing Clause 9(1). Consequent to this, existing Clause 8(3) may be renumbered as Clause 8(2).”

41. Asked, *inter alia*, whether the provisions proposed under Clause 8 (2) and Clause 9 (1) were not repetitive, the Ministry of Corporate Affairs, in reply informed that the issue pointed out has been noted for addressing “appropriately with legislative vetting”.

**42. There appears to be a repetition of the contents of Clause 8(2) in Clause 9 (1). Both the Clauses deal with appointment of a designated partner against a vacancy. The Committee recommend that, as assured by the Ministry of Corporate Affairs, the Clauses will be reviewed and amended appropriately.**

#### **Clause 9(2)—Liabilities of designated partners**

43. Clause 9(2) of the Bill states as under:

“9(2)A designated partner shall be:

- (a) answerable for the doing of all acts, matters and things as are required to be done by the limited liability partnership in respect of compliance of the provisions of this Act including filing of any document, return, statement and the

like report pursuant to the provisions of this Act and as may be specified in the limited liability partnership agreement; and

- (b) liable to all penalties imposed on the limited liability partnership for any contravention of those provisions.”

44. In their written memorandum, the Institute of Company Secretaries of India have pointed out that since the question of answerability arises out of responsibility, a designated partner can be made answerable only when he is responsible for the doing of all acts, matters and things as are required to be done by the limited liability partnership. Hence, ICSI suggested that the word “answerable” be replaced by the word “responsible” in Clause 9(2)(a). In response to a query raised in this regard, the Ministry of Corporate Affairs have expressed agreement to address the issue appropriately.

**45. The Clause 9(2)(a) of the Bill makes a designated partner answerable for the doing of all Acts. This raises an issue that a designated partner can be made answerable only when he is determined as responsible. The Committee desire that the Clause 9(2)(a) be amended suitably to substitute the word ‘answerable’.**

#### D. INCORPORATION

##### **Clause 11—Incorporation of Document**

46. Clause 11 provides:

“11(1) 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 have subscribed 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 with a statement in the prescribed form, made by either an advocate, or a Company Secretary or a Chartered Accountant, who is engaged in the formation of the limited liability partnership and by anyone who subscribed his name to the incorporation document, that all the requirements of this Act and the rules made thereunder have been complied with, in respect of incorporation and matters precedent and incidental thereto.”

47. The ICSI has suggested that Clause 11(1)(c) requires a statement in prescribed form to be filed by an advocate or a company secretary or a chartered accountant. To bring clarity as to when the statement is to be filed, the word 'with' may be replaced with the words 'along with the incorporation document' in the sub-clause and the redrafted sub-clause may read as follows:

"11(1)(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, who is engaged in the formation of the limited liability partnership and by anyone who subscribed his name to the incorporation document, that all the requirements of this Act and the rules made there under have been complied with, in respect of incorporation and matters precedent and incidental thereto".

48. Questioned in this regard, the Ministry of Corporate Affairs, in reply stated:

"The suggestion is taken note of. Suitable provision would be made to provide the desired clarity".

49. By way of making out a case for entitling Cost Accountants also to file the 'declaration of compliance', the Institute of Cost and Works Accountants of India (ICWAI) had, in their memorandum, suggested as follows:

"It may please be noted that for the formation of LLP also the practicing Cost Accountants have not been authorised to file declaration of compliance. As a well-recognized profession in the electronic age, exclusion of professionals like Cost Accountants from the filing of declaration of compliance under the LLP as well as Companies Act is discriminatory. Further the proactive measures initiated under MCA21 give equal footing to all the three professionals. It is desired that the same may be extended to all the three professionals i.e., practicing Chartered Accountants, Cost Accountants and Company Secretaries in all compliances whether under the Companies Act or LLP Bill.

It is pertinent to mention that the Chartered Accountants Act, 1949/ Cost and Works Accountants Act 1959 and Company Secretaries Act 1980 have undergone change and enabled formation of Multi-Disciplinary Partnerships as per the First Schedule to the respective Acts. Accordingly professionals from all the three Institutes are permitted to form partnership among themselves and share commission, brokerage in the fees or profits of their professional business."

50. While responding to this, the Ministry have furnished following reply:

“The suggestion is taken note of. Suitable provision may be considered for including Cost Accountants in the Clause”.

**51. It has been brought to the notice of the Committee that there are two shortcomings in Clause 11(1)(c) of the Bill. First, the sub-clause requires filing of a compliance statement but does not specify when that statement is to be filed. Institute of Company Secretaries of India (ICSI) has suggested to the Committee that the sub-clause be amended to indicate that the compliance statement be filed along-with the incorporation document. Second, the professionals authorized to file the compliance statement include only three categories viz. advocate, company Secretary and Chartered Accountant and do not include Cost Accountants. The Committee desire the Ministry of Corporate Affairs to address these concerns and suitably modify the Clause 11(1)(c) to rectify the shortcomings.**

#### **Clause 12 – Incorporation by Registration**

52. Clause 12 of the Bill reads as under:

- 12(1) When the requirements imposed by clauses (b) and (c) of sub-section (1) of section 11 have been complied with, the Registrar shall retain the incorporation document and, unless the requirement imposed by clause (a) of that sub-section has not been complied with, he shall within a period of fourteen days-
- (a) register the incorporation document; and
  - (b) give a certificate that the limited liability partnership is incorporated by the name specified in the incorporation document.
- (2) The Registrar may accept the statement delivered under clause (c) of sub-section (1) of section 11 as sufficient evidence that the requirement imposed by clause (a) of that sub-section has been complied with.
- (3) The certificate shall be signed by the Registrar and authenticated by his official seal.
- (4) The certificate is conclusive evidence that the limited liability partnership is incorporated by the name specified in the incorporation document.

53. The ICSI has suggested that sub-clauses 12(1)(b) and 12(4) may be redrafted as follows for the sake of brevity:

“Sub-clause 12 (1) (b): give a certificate that the limited liability partnership is incorporated by the name specified therein.

Sub-clause 12 (4): The certificate is conclusive evidence that the limited liability partnership is incorporated by the name specified therein.”

54. In their written submission, the Ministry of Corporate Affairs have agreed to address the issue of redrafting the provisions for the purpose of brevity and providing clarity.

**55. The Committee desire that for the sake of brevity, the words “in the incorporation document” appearing in sub-clauses 12(1)(b) and 12(4) be substituted with the word ‘therein’.**

#### **Clause 13 – Registered Office**

56. Clause 13 of the bill provides as under:

- “13(1) Every limited liability partnership shall have a registered office to which all communications and notices may be addressed and where they shall be received.
- (2) A document may be served on a limited liability partnership or a partner or designated partner thereof by sending it by post under a certificate of posting or by registered post or by any other mode, which may be prescribed, or by leaving at its registered office.
- (3) A limited liability partnership may change the address of its registered office by filing with the Registrar notice of such change in such form and manner as may be prescribed and any such change shall take effect only upon such filing.
- (4) If the limited liability partnership contravenes any provisions of this section, the limited liability partnership and its every partner shall be punishable with fine which shall not be less than two thousand rupees but which may extend to twenty-five thousand rupees.”

57. It has been felt by the ICSI that the sub-clause 13(2) needs to be redrafted to clarify/ensure service of documents to partners other than designated partners. It has, therefore been suggested that the sub-clause may be redrafted as follows:

“A document may be served on a limited liability partnership or designated partner thereof by sending it by post under a certificate

of posting or by registered post or by any other mode, which may be prescribed, at the registered office and in case of partners other than designated partners at their usual residential address”.

58. In response to a related query posed, the Ministry of Corporate Affairs have expressed concurrence to appropriately address the issue.

59. Further it has been felt by the CII regarding Clause 13 (3) that the existing private companies or unlisted public companies may seek a change in their registered office from one state to the other and opt for conversion into LLP forms of business firms for operating in a new state. As change in name and the address could make it difficult for creditors and other stakeholders to track such companies, CII has suggested that adequate notices to all the stakeholders should be insisted upon.

60. Asked to point out the ways and means of addressing such concerns involving the interests of the stakeholders, the Ministry of Corporate Affairs, stated as under:—

“Clause 13(3) of the Bill provides that a LLP may change the address of its registered office by filing with the Registrar notice of such change in such form and manner as may be prescribed and any such change shall take effect only upon such filing.

There will be issues relating to protection of interest of creditors and other stakeholders like employees etc. in case an LLP proposes to change its registered office from one state to another. In such a situation the regulatory framework applicable to companies may need to be applied to LLPs. Clause 63 of the Bill proposes that the relevant provisions of the Companies Act, 1956 may be made applicable to LLPs at any time in the future by Notification by Central Government, with such changes or modifications as appropriate. Notifications incorporating such adaptations would be placed before the Parliament in draft form and shall be subject to modification/refusal by the Parliament.

Alternatively, a suitable enabling provision in the LLP Bill may be considered empowering Central Government to prescribe suitable rules for protection of interests of creditors and other stakeholders in such situation”.

**61. The Clause 13 (2) stipulates that the registered office of a LLP will be the venue for serving of documents on LLP or a partner or designated partner. ICSI has proposed that in case of partners**

other than designated partners, the venue for serving documents should be their usual residential address and not the registered office of LLP. This has been agreed to by the Ministry of Corporate Affairs. The Committee, accordingly, expect suitable amendment of the Clause 13 (2) to reflect this position.

62. There will be issues relating to protection of interest of creditors and other stakeholders when LLP changes its registered office from one place to another. The Ministry of Corporate Affairs have proposed that in such a situation, the regulatory framework applicable to companies may need to be applied to LLPs and that this could be done by a Notification by Central Government at any time in the future. The Committee feel that appropriate regulatory framework in this regard should be built into the Bill itself considering the importance of protecting the interests of creditors and other stakeholders. The Committee, accordingly, desire suitable provisions in this regard in the Bill.

#### Clause 14 – Effect of incorporation

63. Clause 14 reads as under:

“14. A limited liability partnership shall, by its name have the power of—

- (a) suing and being sued;
- (b) acquiring, owning, holding and developing or disposing of property, both movable and immovable;
- (c) having a common seal; and
- (d) doing and suffering such other acts and things as bodies corporate may lawfully do and suffer.”

64. Elsewhere, the provisions under Clause 31 (1) on the form of contribution of partners to the benefit of a Limited Liability Partnership, read as under:—

“A contribution of a partner may consist of tangible or intangible property or other benefit to the limited liability partnership, including money, promissory notes, other agreements to contribute cash or property, and contracts for services performed or to be performed.”

65. In this regard, the Institute of Company Secretaries of India have pointed out that in sub-clause 14(b), the terms “tangible/

intangible” need to be included for covering the term, ‘property’ in line with the definition of ‘property’ as enumerated in Clause 31(1). Asked to respond to the suggestion, the Ministry stated as below:

“The suggestion is noted to be addressed appropriately”.

66. With specific reference to the provisions of Clause 14 (c), whereby an LLP is to have a common seal, the suggestion received from the Institute of Chartered Accountants of India (ICAI) reads as under:—

“Companies Act, 1956 requires companies to have common seal, because the company does not act by itself but through its common seal. Clause 14(C) of the LLP Bill also provides that the LLP should have a common seal. However, the objective of the same is not clear. LLP Bill nowhere provides where the common seal would be used. Further, LLP acts through partners, thus the utility of having a common seal is doubtful”.

67. Questioned on the desirability of having a common seal for LLPs, as pointed out by the Institute of Chartered Accountants of India, the Ministry of Corporate Affairs, in reply, informed:—

“Since LLP would be a separate legal entity, approval of LLP to any document/agreement may be expressed through affixing the common seal of LLP. Similarly, there may be agreements between an LLP and its partners. On such Agreements the LLP may be represented through its Common Seal. The provision of common seal to provide authenticity to LLP documents may be relevant in the Indian context since disputes involving the LLP would require adjudication. However, the specific documents where affixing of common seal would be mandatory may be provided as suggested”.

**68. The term ‘property’ used in sub-clause 14(b) does not distinguish between tangible and intangible property as defined in other statutes. Also the sub-clause 14(c) which empowers an LLP to have a common seal by its name does not specify where affixing of common seal would be mandatory. The Ministry of Corporate Affairs have agreed to address these shortcomings. The Committee expect suitable provisions in this regard.**

#### **Clause 15—Name of an LLP**

69. Clause 15 pertaining to the registered name of a Limited Liability Partnership provides as follows:—

“15(1) Every limited liability partnership shall have either the words “limited liability partnership” or the acronym “LLP” as the last words of its name.

- (2) No limited liability partnership shall be registered by a name which, in the opinion of the Central Government is—
- (a) undesirable;
  - (b) identical or too nearly resembles to that of any other partnership firm or limited liability partnership or body corporate or a registered trade mark, or a trade mark which is subject of an application for registration, of any other person under the Trade Marks Act, 1999”.

70. On the afore-mentioned provisions of the Bill, the ICSI, pointed out that the word ‘or’ between the words ‘undesirable’ and ‘identical’ was missing. Questioned whether it was not essential to incorporate the word ‘or’ between the words ‘undesirable’ and ‘identical’ as suggested, the Ministry of Corporate Affairs expressed concurrence for incorporating the same following legislative vetting.

**71. The absence of the word ‘or’ between the words ‘undesirable’ in sub-clause 15(2) (a) and ‘identical’ in sub-clause 15(2)(b) may lead to unintended interpretations. The Committee desire insertion of the deficient word.**

**Clause 17—Rectification of name of a limited liability partnership**

72. Clause 17 reads as under:

- “17(1) Notwithstanding anything contained in sections 15 and 16, where the Central Government is satisfied that a limited liability partnership has been registered (whether through inadvertence or otherwise and whether originally or by a change of name) under a name which—
- (a) is a name referred to in sub-section (2) of section 15; or
  - (b) so nearly resembles the name of any other limited liability partnership or body corporate or other name as to be likely to be mistaken for it;

the Central Government may direct the limited liability partnership to change its name, and the limited liability partnership shall comply with the direction within three months after the date of the direction or such longer period as the Central Government may allow.

- (2) Any limited liability partnership which fails to comply with a direction given under sub-section (1) shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to five lakh rupees”.

73. By way of expressing the need for ensuring that the designated partners were also made liable for failure to comply with the directions of the Central Government on changing the name of a LLP considered to be undesirable, a suggestion made by the ICSI with specific reference to the provisions proposed under Clause 17 (2) states as follows:—

“Under sub-clause (2) of Clause 17, in addition to the limited liability partnership, its designated partners may also be held responsible for failure to comply with the directions of the Central Government and accordingly, the sub-clause (2) may be redrafted and read as under:—

“17(2) Any limited liability partnership which fails to comply with a direction given under sub-section (1), the limited liability partnership and its designated partners shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to five lakh rupees”.

74. Asked to respond to the suggestion, the Ministry of Corporate Affairs, in reply stated that the same was being taken note of, to be addressed appropriately with vetting by Legislative Department.

**75. Under Clause 17(2), the liability to punishment for failure to comply with the direction of the Central Government is made only to the LLP and not to its designated partners. As agreed to by the Ministry of Corporate Affairs, the Committee desire that Clause 17 (2) be suitably amended to make designated partners also liable for punishment in the event of failure to comply with the Central Government directions.**

#### **Clause 21 – Publication of name and limited liability**

76. Clause 21(1) states as below:

“21(1) Every limited liability partnership shall ensure that its invoices and official correspondence bear the following, namely:—

- (a) the name, address and registration number of the limited liability partnership; and
- (b) a statement that it is registered with limited liability.”

77. In their written memorandum, the ICSI have suggested for modifying/amending the provisions proposed under Clause 21(1), which reads as follows:—

“Under sub clause (1) the word “correspondence” may be replaced with the word “publications” in order to broaden its ambit and under Clause 21(1)(a) the word “registered” may be added before the word “address”.

78. The clause may read as:

- (1) Every limited liability partnership shall ensure that its invoices and official publications bear the following, namely:—
  - (a) the name, registered address and registration number of the limited liability partnership; and
  - (b) a statement that it is registered with limited liability”.

79. On the suggestion expressed for modifying the provisions, the Ministry of Corporate Affairs, in reply, submitted as under:

“The suggestions are noted to be addressed appropriately with legislative vetting”.

**80. The Committee agree with the ICSI’s two suggestions proposing substitution of the word ‘correspondence’ with the word ‘publications’ in Clause 21 (1) to broaden its ambit and insertion of the word ‘registered’ before the word ‘address’ in sub-clause 21 (1) (a) to ensure that only the registered address is published by LLP. Accordingly, the Committee recommend suitable modifications in Clause 21 (1).**

## E. PARTNERS AND THEIR RELATIONS

### **Clause 22 – Eligibility to be partners**

81. Clause 22 reads as under:

“22. On the incorporation of a limited liability partnership, the persons who subscribed their names to the incorporation document shall be its partners and any other person may become a partner of the limited liability partnership by and in accordance with the limited liability partnership agreement”.

82. The PHDCCI, in their written submission, have suggested following in respect of this Clause:—

“While providing that any other person may become a partner of a LLP, it is suggested that Clause 22 may also provide for a restriction on the number of partnerships which a person can enter into as a partner”.

83. Questioned whether it was not essential to restrict the number of partnership firms in which a person may become a partner, the Ministry of Corporate Affairs, in response informed:—

“At present there is no restriction under Partnership Act, 1932 in respect of number of partnership firms in which a person may become partners. There is a restriction under the Companies Act, 1956 on number of companies in which a person may hold office at the same time as director. The maximum number provided for this purpose in such Act is 15. However private companies (which are neither subsidiary nor holding companies of public companies), unlimited companies and ‘companies not carrying business for profit’ are not counted while counting such limit of maximum 15 companies.

Since LLP structure is proposed to be based on agreement with partners having freedom to manage their internal affairs themselves, there does not appear to be any justification at this stage to put a restriction on number of LLPs in which a person may become partner.

However, a requirement/restriction on the number of LLPs in which a person may become ‘designated partner’ may be considered”.

**84. As regards the issue raised by PHDCCI favouring a restriction on number of LLPs in which a person may become partner, the Committee are inclined to agree with the view of the Ministry of Corporate Affairs that such restriction may impact on freedom of partners to manage their internal affairs themselves. The Committee, however, recommend that there should be an appropriate provision to put restriction on number of LLPs in which a person may become ‘designated partner’.**

#### **Clause 24 – Cessation of partnership interest**

85. Sub clauses 1, 2 and 3 of Clause 24 read as under:

“24(1) A person may cease to be a partner of a limited liability partnership in accordance with an agreement with the other

partners or, in the absence of agreement with the other partners as to cessation of being a partner, by giving a notice of not less than thirty days to the other partners of his intention to resign as partner.

- (2) A person may also cease to be a partner of a limited liability partnership by his death or by dissolution of the limited liability partnership.
- (3) Where a person has ceased to be a partner of a limited liability partnership (hereinafter referred to as “former partner”), the former partner is to be regarded (in relation to any person dealing with the limited liability partnership) as still being a partner of the limited liability partnership unless—
  - (a) the person has notice that the former partner has ceased to be a partner of the limited liability partnership; or
  - (b) notice that the former partner has ceased to be a partner of the limited liability partnership has been delivered to the Registrar.”

86. On the provisions proposed under Clause 24(1) and (2), a view expressed by ICSI is as under:—

- (a) Considering the impact any cessation shall have on the limited liability partnership, it is suggested that any notice of cessation should be in writing to form some cognizable evidence of such notice. It is, therefore, suggested that Clause 24(1) be redrafted as under;
  - “(1) A person may cease to be a partner of a limited liability partnership in accordance with an agreement with the other partners or, in the absence of agreement with the other partners as to cessation of being a partner, by giving a notice in writing of not less than thirty days to the other partners of his intention to resign as partner”.
- (b) Since, contractual capacity is requisite to enter into a limited liability partnership agreement, in addition to death or dissolution of limited liability partnership, a partner who has applied to be adjudged as insolvent or declared as insolvent or is declared to be of unsound mind by a competent court, should cease to be a partner of a limited

liability partnership. Accordingly sub-clause (2) may be redrafted to read as:

“(2) A person ceases to be a partner of a limited liability partnership by his death or by dissolution of the limited liability partnership. Further, a partner who has applied to be adjudged as insolvent or declared as insolvent or is declared to be of unsound mind by a competent court, shall cease to be a partner of a limited liability partnership”.

87. In response to a related query, the Ministry of Corporate Affairs have agreed to take note of the suggestion for modifying sub-clause (1) of Clause 24 to provide for notice of cessation of partnership to be mandatorily in writing; and sub-clause (2) of Clause 24 to provide for cessation in case of insolvency, state of unsound mind etc. of a partner.

88. Further, the PHDCCI, in their memorandum, pointed out in respect of Clause 24(3) as follows:

“Clause 24(3) should provide that the notice for change of partner should be made public document. Every person dealing with LLP should have the right to have the list of partners”.

89. By way of responding to a question on the suggestion, the Ministry, in reply, stated as follows:

“Incorporation Document, Names of partners and changes made therein may be considered for inspection by public.”

**90. Under sub-clause 1 of Clause 24, a person may cease to be a partner of a LLP by giving a notice of his intention to resign as partner. The sub-clause, however, does not require that the notice be given in writing. Unless this requirement of giving the notice in writing is expressly provided for in the Bill, the Bill will leave room for ambiguity.**

**91. One of the valid reasons for a person to cease to be a partner could be his insolvency or unsound mind. The sub-clause 2 of Clause 24, which deals with grounds for a person to cease to be a partner of a LLP, has not incorporated this ground as specified in the Companies Act, 1956.**

**92. As regards sub-clause (3) of Clause 24, the PHDCCI has suggested that the notice for change of partner should be made a public document. The Committee see merit in the suggestion.**

93. In the light of what is stated above regarding sub-clauses (1), (2) and (3) of Clause 24, the Committee recommend incorporation of suitable provisions in the Bill to address the deficiencies.

#### **Clause 25—Registration of changes in partners**

94. The provisions under Clause 25 provide for the requirement and the procedure for filing notice about changes in the name and addresses of partners of the LLP to the Registrar.

95. Clause 25 (1) states as under:

25(1) A limited liability partnership shall ensure that—

- (a) where a person becomes or ceases to be a partner, notice is filed with the Registrar within thirty days from the date he becomes or ceases to be a partner; and
- (b) where there is any change in the name or address of a partner, notice is filed with the Registrar within thirty days of such change.

96. In regard to the provisions under Clause 25, a suggestion made by the ICSI reads as follows:

“In order to ensure better compliance, it is suggested that it should be incumbent upon every partner to inform the LLP of any change in his name or address within a period of 30 days of such change”.

97. Responding to the suggestion for making it incumbent on the part of the partners to inform of change in name and address etc., the Ministry of Corporate Affairs, in reply, observed:

“The suggestion is noted. This requirement may be provided for in First Schedule to the Bill”.

98. The Clause 25(1) casts a responsibility on a LLP to file notice about any change in the name or address of a partner within thirty days of such change. This responsibility is consequential in nature and cannot be rendered by an LLP unless information in this regard is furnished to LLP by every partner within a stipulated period. The Bill is, however, silent on the responsibility of partners to furnish timely information to LLP in this respect. The Committee hope that as indicated by the Ministry of Corporate Affairs this requirement will be provided for in the First Schedule to the Bill without fail.

## F. FINANCIAL DISCLOSURES

### **Clause 33—Maintenance of books of accounts, other records and audit, etc.**

99. Clause 33 which provides for the requirement relating to maintenance of proper books of accounts, filing of an annual Statement of Accounts and Solvency etc. reads as under:

- “(1) The limited liability partnership shall maintain such proper books of accounts as may be prescribed relating to its affairs for each year of its existence on cash basis or accrual basis and according to double entry system of accounting and shall maintain the same at its registered office for such period as may be prescribed.
- (2) Every limited liability partnership shall, within a period of six months from the end of each financial year, prepare a Statement of Account and Solvency for the said financial year as at the last day of the said financial year and the designated partners of the limited liability partnership shall put their signature on such statement evidencing their acceptance thereof.
- (3) Every limited liability partnership shall file the Statement of Account and Solvency prepared pursuant to sub-section (2) with the Registrar every year in such form and manner and accompanied by such fee as may be prescribed.
- (4) The accounts of limited liability partnerships shall be audited in accordance with the rules as may be prescribed:  
Provided that the Central Government may, by notification, exempt any class or classes of limited liability partnerships from the requirements of this sub-section.
- (5) Any limited liability partnership which fails to comply with the provisions of this section shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees and the designated partners of such limited liability partnership shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees”.

100. In response to a suggestion, as made by the ICSI for prescribing a time frame for filing of Statement of Accounts and Solvency in terms of the provisions of sub-clause (3), the Ministry of Corporate Affairs expressed concurrence.

101. Further in response to a suggestion in regard to the provisions of Clause 33(4), relating to the audit of accounts of LLPs as made by the ICSI, emphasizing on allowing members of all the three professions *viz.* ICAI, ICSI and ICWAI to perform audit of accounts of LLPs, the Ministry of Corporate Affairs, in reply, stated as follows:

“The suggestion in respect of allowing members of all three professionals to perform audit of accounts of LLPs is noted to be suitably addressed through rules”.

**102. The Clause 33(3) which requires a LLP to file the Statement of Account and Solvency every year has no provision for prescribing a time frame for filing the same. The Committee urge that as agreed to by the Ministry of Corporate Affairs, suitable provision be incorporated in this regard as stipulated in the Companies Act, 1956. There is a suggestion from ICSI in favour of allowing members of all three professional categories *viz.*, Chartered accountants, Company Secretaries and Cost Accountants to perform audit of accounts of LLPs. The Committee note that the Ministry of Corporate Affairs have sought to address this question suitably through rules.**

#### **Clause 34—Annual Return**

103. Clause 34 which deals with the requirement of filing of annual return by every LLP reads as under:

- “(1) Every limited liability partnership shall be required to file an annual return with the Registrar within sixty days of closure of its financial year in such form and manner and accompanied by such fee as may be prescribed.
- (2) Any limited liability partnership which fails to comply with the provisions of this section shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.
- (3) If the limited liability partnership contravenes the provisions of this section, the designated partner of such limited liability partnership shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees”.

104. With reference to the provisions of sub-clause (3) of Clause 34 in particular, the ICSI, in their memorandum, expressed the need for incorporating provisions therein specifying the penal measures that may be applicable in instances of continued non-compliance with the

requirement of filing annual returns by an LLP. Explaining this point, the President of ICSI, while tendering evidence stated as follows:

“On the question of continuing default, in fact, our suggestion was it should be really drafted to specify punishment in case of a continuing non-compliance. For example, if some document is not filed within a certain period, say, 30 or 60 days, then there is an offence. But if there is a continuing offence and if somebody does not file a document for two years, then there should be something specified and the penalty must be enhanced in the case of continuing default”.

105. On this specific issue, the Ministry of Corporate Affairs, in reply responded *inter-alia* as under:

“The suggestion is taken note of in context of the above and in case of non filing of Statement of Account and Solvency under Clause 33 (2) of the Bill.”

106. Further, with a view to establishing sound compliance management, and at the same time facilitating and encouraging the LLPs to comply with various legal requirements, ICSI has suggested that a provision may be inserted specifying that certain LLPs having minimum number of partners or having a minimum turnover or debt exposure should be required to attach with the Annual Return a report by a Practicing Company Secretary on the compliance of the provisions of the Act.

107. When asked to comment on the suggestion, the Ministry of Corporate Affairs, in their written reply submitted as under:

“The suggestion is noted to be addressed appropriately. However, certification requirements will be reviewed and incorporated appropriately keeping compliance costs in view.”

**108. Sub-clauses (2) and (3) of Clause 34 have prescribed penalties for failure of LLP to file annual return within the stipulated time. There is, however, nothing in the sub-clauses to show whether there would be enhanced penalty in the event of prolonged non-compliance. The Committee believe that as promised by the Ministry of Corporate Affairs this shortcoming will be rectified both in respect of failure to file annual return [Clause 34(1)] and failure to file Statement of Account and Solvency [Clause 33(3)].**

109. As regards the ICSI’s suggestion that certain LLPs should be required to attach with the annual return a report by a practicing

**Company Secretary on the compliance of the provisions of the Act, the Committee recommend that certification requirements will be reviewed and incorporated appropriately.**

**Clause 37—Power of Registrar to obtain information**

110. Clause 37 reads as under:

- “37(1) In order to obtain such information as the Registrar may consider necessary for the purposes of carrying out the provisions of this Act, the Registrar may—
- (a) require any present or former partner or designated partner or an employee of a limited liability partnership to answer any question in writing which the Registrar may consider necessary to ask for the purposes specified in this sub-section; or
  - (b) summon that person to appear before him or an inspector or any other public officer whom the Registrar may designate to answer any such question.
- (2) The Registrar may further require the person referred to in sub-section (1) to make such further declaration or supply such further particulars as the Registrar may consider necessary.
- (3) Any person who, without lawful excuse, fails to comply with any summons or requisition of the Registrar under this section shall be punishable with fine which shall not be less than two thousand rupees but which may extend to twenty-five thousand rupees.”

111. In regard to the powers proposed to be vested in the Registrar, the ICSI, in their memorandum raised the following point:

“The sub-clause seeks to empower the Registrar to call for information from any former or designated partner or employee of the limited liability partnership or to summon them before him for the purpose of carrying out the provisions of this Bill.

The intent of the provision is to seek information by those who are privy to the information. So there is no need for issue of summons. There is no similar provision under the Companies Act, 1956. Further, there can be scope for misuse of the provision. It is, therefore, suggested to delete Clause 37(1)(b).

Consequently, under Clause 37(1)(3) the words “summons or” may also be deleted”.

112. Questioned on the appropriateness of the proposal to vest the Registrar with power to summon 'persons' including former partners etc., and the measures by way of which the apprehensions expressed on the possible misuse of such power would be addressed, the Ministry of Corporate Affairs in their reply informed:

"The intent is to enable Registrar to obtain information from the LLP as may be necessary for the implementation of this Act. However, the provisions would be reviewed to ensure that there is no unnecessary harassment of any person who is willingly cooperating in providing such information. Arrangement to compel appearance of a person or providing of information may be necessary where such information is not provided on valid requisition by the Registrar. Such powers to Registrar are considered necessary in situations where there is suspicion of wrong doing or fraud".

**113. There are apprehensions that there can be scope for misuse of the power to summon a person vested with the Registrar under sub-clause 37(1)(b). It has been pointed out that there is no similar provision under the Companies Act, 1956. The Committee desire that as assured by the Ministry of Corporate Affairs, appropriate safeguards be incorporated to ensure that there is no unnecessary harassment of any person who is willingly cooperating in providing requisite information.**

#### **Clause 40—Enforcement of duty to make returns**

114. Clause 40(1) reads as under:

- "40(1) If any limited liability partnership is in default in complying with—
- (a) any provision of this Act or of any other law which requires the filing in any manner with the Registrar of any return, account or other document or the giving of notice to him of any matter; or
  - (b) any request of the Registrar to amend or complete and resubmit any document or to submit a fresh document; and
  - (c) fails to make good the default within fourteen days after the service on the person of a notice requiring it to be done,

the Tribunal may, on application by the Registrar, make an order directing that person or if that person is a corporation any officer of the body corporate to make good the default within such time as is specified in the order”.

115. The ICSI have made following suggestion in this regard:

“Under Clause 40(1)(c) the terms “corporation” and “body corporate” have been used interchangeably. Uniformity in use of words may be maintained”.

116. When asked whether it is not necessary to maintain uniformity in use of the words *viz.* “corporation” and “body corporate”, as pointed out, the Ministry of Corporate Affairs stated as below in reply:

“The suggestion is noted to be addressed appropriately with legislative vetting”.

**117. The Committee desire that the use of interchangeable words such as ‘Corporation’ and ‘body corporate’ in Clause 40 (1) (c) be avoided, and the word ‘body corporate’ used uniformly throughout the legislation.**

## G. INVESTIGATION

### **Clause 42—Investigation of the affairs of a limited liability partnership**

118. Clause 42 (3) states:

“42(3). The appointment of inspectors pursuant to sub-section (2) may be made,—

- (a) if not less than one-fifth of the total number of partners of the limited liability partnership make an application along with supporting evidence and security amount as may be prescribed; or
- (b) if the limited liability partnership makes an application that the affairs of the limited liability partnership ought to be investigated; or
- (c) if, in the opinion of the Central Government, there are circumstances suggesting—
  - (i) that the business of the limited liability partnership is being conducted with an intent to defraud its

creditors, partners or any other person, or otherwise for a fraudulent or unlawful purpose, or in a manner oppressive or unfairly prejudicial to some or any of its partners, or that the limited liability partnership was formed for any fraudulent or unlawful purpose; or

- (ii) that any of the partners of the limited liability partnership has been guilty of fraud, misfeasance or other misconduct towards the limited liability partnership or towards its other partners; or
- (iii) that any of the partners of the limited liability partnership has not been given all the information with respect to its affairs which they might reasonably expect, including information relating to the remuneration payable to a designated partner of the limited liability partnership; or
- (iv) that, on receipt of a report of the Registrar, there are sufficient reasons that the affairs of the limited liability partnership ought to be investigated."

119. With a view to cover the past conduct of the limited liability partnership too, the ICSI proposed that the expression "the business of the limited liability partnership is being conducted" in sub-clause (3)(c)(i) of Clause 42 needed to be changed to "the business of the limited liability partnership is being or has been conducted".

120. Questioned whether it was essential or agreeable to carry out the modification in the provision, as suggested, the Ministry of Corporate Affairs responded in the affirmative.

**121. The circumstances warranting appointment of inspectors to investigate the affairs of a LLP under Clause 42 (3)(c)(i) specify the present conduct of a LLP but not past conduct. The Committee recommend the past conduct of a LLP should be brought under the purview of the sub-clause. The Committee desire that this lacuna be rectified suitably.**

#### H. CONVERSION OF ENTITIES TO LLP

122. Clauses 54, 55 and 56 of the Limited Liability Partnership Bill, 2006 provide for conversion of a firm or private company or unlisted public company to a limited liability partnership. The provisions of the second, third and the fourth schedules respectively would apply for enabling such conversion to LLP form.

123. On issues related with Stamp Duty Liability when a partnership or private limited company or an unlisted company converts into an LLP, the FICCI, in their Memorandum submitted as under:

“The stamp duty relaxation should be made available on conversion of existing partnerships/private and unlisted public companies to LLP in India, which would be in line with Part IX of the Companies Act, 1956. In UK first an LLP is established and then the business and the assets of the existing partnership of company transferred. There is stamp duty relief on any property transferred within the first year of conversion. It is therefore suggested to follow the same guidelines in India.

Under Chapter IX of the Companies Act, when a Firm registers itself as a Company, there is no conveyance or transfer of the properties. The vesting under Part IX is not consequent or incidental to a transfer. It is a statutory vesting of the properties of the Firm in the Company. In view of the benefit of the experience under the Companies Act as discussed above, a similar provision needs to be incorporated under the Limited Liability Partnership Bill so as to ensure that Conversion of an existing entity (whether a Firm, Private Company or Public Unlisted Company), does not amount to a ‘transfer’ of assets of the existing entity. The consequence to this would be no stamp duty since there is no transfer”.

124. The views expressed by the PHDCCI on aspects related with stamp duty payable on conversion into an LLP, are on similar lines as expressed above which read as follows:

“An aspect which needs to be addressed in the context of conversion from existing form of organization to LLP form of organization is that of registration charges and stamp duty relief on the lines of Part IX of the Companies Act, 1956. It would be important to have tax neutrality for conversion of partnership firms or companies into LLPs”.

125. Section 575 of the Companies Act, 1956 regarding vesting of property on registration reads as under:

Vesting of property on registration:—

“All property, movable and immovable (including actionable claims), belonging to or vested in a company at the date of its registration in pursuance of this Part, shall, on such registration, pass to and vest in the company as incorporated under this Act for all the estate and interest of the company therein.”

126. Questioned on the afore-mentioned concerns expressed by the Chambers of Commerce on the stamp duty payable on transferring assets on account of a firm converting into an LLP etc. the Ministry of Corporate Affairs, in a written reply, informed as follows:

“Levy of stamp duty on transactions relating to various entities is entrusted to the State Governments under the Constitution. Therefore, a stipulation in this regard in a Central legislation may result in constitutional issues. Therefore, the proposed Bill, while allowing conversion of different business entities into LLPs does not contain any provision as to treatment of stamp duty.

Under the Companies Act, 1956 also while Part IX allows conversion of entities belonging to different forms into companies, it does not stipulate any stamp duty regime for the purpose.

However, rationalization of stamp duties constitutes an element of reform at the State level. It would be appropriate to address this issue through dialogue with the States. This, however, is an important issue from the point of view of making the LLP structure more attractive”.

**127. One serious lacuna that is noticed by the Committee in the LLP Bill is the absence of a provision for vesting of property, on conversion of an entity into a Limited Liability Partnership. This lacuna will have implications in terms of stamp duty, etc. and discourage existing entities from conversion to LLP. The Committee in this connection note that Part IX of the Companies Act, 1956 has a provision (Sec. 575) that all property vested in a company at the date of its registration shall vest in the company as incorporated under that Act for all the estate and interest of the Company therein. The Ministry of Corporate Affairs have contended that the Companies Act, 1956 does not stipulate any stamp duty regime for the purpose of conversion of entities belonging to different forms into companies. The Committee desire that suitable provision as in Part IX of the Companies Act, 1956 should be incorporated in the LLP Bill.**

#### I. WINDING UP AND DISSOLUTION

**Clause 60—Circumstances in which limited liability partnership may be wound up by Tribunal.**

128. Clause 60 of the Bill provides:

“60. A limited liability partnership may be wound up by the Tribunal—

- (a) if the limited liability partnership decides that limited liability partnership be wound up by the Tribunal;

- (b) if the number of partners of the limited liability partnership is reduced below two;
- (c) if the limited liability partnership is unable to pay its debts;
- (d) if the limited liability partnership has acted against the interests of the sovereignty and integrity of India, the security of the State or public order;
- (e) if the limited liability partnership has made a default in filing with the Registrar the Statement of Account and Solvency or annual return for any five consecutive financial years;
- (f) if the Tribunal is of the opinion that it is just and equitable that the limited liability partnership be wound up”.

129. The ICAI, in their memorandum proposed that sub-clause (b) of Clause 60 may be deleted, as sudden death may otherwise wind up the LLP.

130. Questioned in this regard, the Ministry of Corporate Affairs in their written reply stated as below:

“The transition arrangements including that of winding up in the event of sudden death of a partner that results in the number of partners in an LLP falling below the statutory minimum of two would be reviewed to enable a smooth transition involving induction of new partners/conversion to other forms of business etc. within a fixed time period failing which resort to process of winding up may be resorted to, if so warranted”.

**131. Clause 60(3) provides for winding up of a LLP by the Tribunal, if the number of partners of the LLP is reduced below two. The Committee feel that in the event of sudden death of a partner that results in the number of partners in a LLP falling below the statutory minimum of two, there should be provision for transitional arrangements. Initiating winding up process should be the last resort. The Committee accordingly recommend that to meet the situation stated above, there should be a suitable provision in the Bill to enable smooth transition involving induction of new partners/conversion of the LLP to similar forms of business, etc. within a fixed time period.**

## J. MISCELLANEOUS

### **Clause 64: Electronic filing of documents.**

132. Clause 64(2) states:

“64(2). A copy of or an extract from any document electronically filed with or submitted to the Registrar which is supplied or issued by the Registrar and certified through digital signature to be a true copy of or extract from such document shall, in any proceedings, be admissible in evidence as of equal validity with the original document”.

133. For the purpose of defining ‘digital signature’ the ICSI have pointed out the need for incorporating, the expression as defined in the ‘Information Technology Act, 2000’ in sub-clause (2) of Clause 64.

134. The term is defined in the Information Technology Act as under:

“2(1)(p) digital signature means authentication of any electronic record by a subscriber by means of an electronic method or procedure in accordance with the provisions of section 3;”

135. Accordingly, the redrafted sub-clause (2), as suggested would read as:

“(2) A copy of or an extract from any document electronically filed with or submitted to the Registrar which is supplied or issued by the Registrar and certified through digital signature (as defined in the IT Act, 2000) to be a true copy of or extract from such document shall, in any proceedings, be admissible in evidence as of equal validity with the original document”.

136. Questioned whether it would not be essential to make it clear that the definition of digital signature would be in accordance with the information Technology Act, the Ministry of Corporate Affairs, agreed to carry out the relevant modification following legislative vetting.

**137. The term ‘digital signature’ used in Clause 64 (2) has not been defined anywhere in the Bill. The ICSI has suggested adoption of definition in this regard as available in the Information Technology Act, 2000. The Committee agree with the suggestion and accordingly recommend suitable provision in the Bill in this regard.**

### **Jurisdiction under the proposed Act prior to constitution of National Company Law Tribunal**

138. Clause 67 states as under:

- “67(1) The Tribunal shall discharge such powers and functions as are, or may be, conferred on it by or under this Act or any other law for the time being in force.
- (2) Any person aggrieved by an order or decision of Tribunal may prefer an appeal to the Appellate Tribunal and the provisions of sections 10FQ, 10FZA, 10G, 10GD, 10GE and 10GF of the Companies Act, 1956 shall be applicable in respect of such appeal.”

139. The Institute of Company Secretaries of India has submitted in this regard that Jurisdiction under the Limited Liability Partnership Bill, 2006 has been conferred on the National Company Law Tribunal to be constituted under sub-section (1) of section 10FB of the Companies Act, 1956. However, until and unless, the National Company Law Tribunal or the National Company Law Appellate Tribunal are constituted and become functional, it is suggested to provide that the Court/Company Law Board shall have jurisdiction.

140. When queried on this aspect, the Ministry of Corporate Affairs in their written reply stated as under:

“The need for providing suitable transitional arrangement implicit in the suggestion is taken note of.

In view of the existing legal challenge to the constitution of NCLT and the NCLAT, suitable transitional provision would need to be incorporated in the Bill to provide that appropriate judicial/quasi judicial structures already available for companies in the Companies Act, 1956 comprising of appropriate courts as well as other adjudicating fora including the CLB may adjudicate on issues relating to LLPs under the Act”.

**141. The Clause 67 of the Bill confers jurisdiction on the National Company Law Tribunal (NCLT) and the National Company Law Appellate Tribunal (NCLAT) constituted under the Companies Act, 1956. According to the Ministry of Corporate Affairs, in view of the existing legal challenge to the constitution of NCLT and the NCLAT, suitable transitional provisions would need to be incorporated in the Bill to provide that appropriate judicial/quasi-judicial structures**

available for companies in the Companies Act, 1956, comprising of appropriate Courts as well as other adjudicating fora including the CLB may adjudicate on issues relating to LLPs. The Committee desire that suitable transitional provision in this regard be incorporated in the Bill, till such time the NCLT and the NCLAT become functional.

#### K. SCHEDULES

##### **First Schedule [vide Section 23 (4)]**

142. The first schedule of the Bill deals with default provisions for limited liability partnerships.

The paragraph 1 of the First Schedule reads as follows:—

“The mutual rights and duties of the partners and the mutual rights and duties of the limited liability partnership and its partners shall be determined, subject to the terms of any limited liability partnership agreement or in the absence of any such agreement, by the provisions in this Schedule.”

143. With a view to make the rights and duties of partners all inclusive in nature, the ICSI has suggested that the words “on any matter” in the first paragraph of the schedule, may be added so as to read as:

“The mutual rights and duties of the partners and the mutual rights and duties of the limited liability partnership and its partners shall be determined, subject to the terms of any limited liability partnership agreement or in the absence of any such agreement by the provisions in this schedule”.

144. On this, the Ministry have replied as under:

“The suggestion is noted to be addressed appropriately with legislative vetting”.

##### **Second Schedule (vide Section 54)**

(i) The Second Schedule of the Bill provides for conversion from firm to limited liability partnership.

Paragraph 5 (1) of Second Schedule states:

“5 (1) Nothing in this schedule shall be construed as to require the Registrar to register any limited liability partnership if he is not satisfied with the particulars or other information furnished under the provisions of this Act.”

145. Pointing out that the Bill/provisions of the second schedule were silent on the procedure to be followed in instances where the Registrar may refuse to register a 'Limited Liability Company' in terms of the stipulations of para 5(1) of the schedule, the ICSI has emphasized on specifying/designating the authorities to whom appeals can be made in such cases. Elaborating on this point further, a representative of ICSI, stated as below during the course of oral evidence:

"On the appellate procedure, there was a question as to what should be the procedure. Probably, it could be from the ROC to the Regional Director and then to the Company law Board till the NCLT is formed. Once the NCLT is in place, then from the ROC, it could flow to the RD and then to the NCLT. But till that time, the appeal could lie to the RD and from the RD, it could be to the Company Law Board".

146. In response to a related question, the Ministry of Corporate Affairs have agreed to take note of the suggestion for providing for an appellate authority, which could consider appeals against refusal of registration of an LLP by the Registrar.

(ii) Paragraph 6 of the Second Schedule reads as under:—

"On and from the date of registration specified in the certificate of registration issued under paragraph 4,—

- (a) there shall be a limited liability partnership by the name specified in the certificate of registration registered under this Act;
- (b) all movable and immovable property vested in the firm, all assets, interests, rights, privileges, liabilities, obligations relating to the firm and the whole of the undertaking of the firm shall be transferred to and shall vest in the limited liability partnership without further assurance, act or deed; and
- (c) the firm shall be deemed to be dissolved and if earlier registered under the Indian Partnership Act, 1932 (9 of 1932) removed from the records maintained under that Act".

147. Pointing out the need for maintaining uniformity in defining the term 'property', the ICSI also suggested re-drafting paragraph 6(b) of the second schedule. Thereby, the redrafted paragraph would read:—

"(b) all tangible (including movable and immovable) and intangible property vested in the firm, all assets, interests, rights, privileges,

liabilities, obligations relating to the firm and the whole of the undertaking of the firm shall be transferred to and shall vest in the limited liability partnership without further assurance, act or deed”.

148. The Ministry of Corporate Affairs have expressed agreeability to suitably address the issue raised.

### **Third and Fourth Schedule**

149. Para 4 (a) (ii) of the Third Schedule and para 5(a) (ii) of the Fourth Schedule seek particulars of the date on which the company was incorporated under the Companies Act, 1956.

150. The ICSI has stated that to remove ambiguity in between companies registered under the Companies Act, 1956 and “existing companies” registered under any earlier Acts, the words “under the Companies Act, 1956” appearing in Paragraph 4 (a) (ii) of the Third Schedule and Paragraph 5 (a) (ii) of the Fourth Schedule, may be deleted and it may be redrafted as follows:—

“(ii) the date on which the company was incorporated”.

151. While replying to this, the Ministry of Corporate Affairs stated as under:

“The suggestion is noted to be addressed appropriately with legislative vetting”.

**152. The Committee recommend following modifications in the schedules to the Bill, as agreed to by the Ministry of Corporate Affairs:—**

**(i) First Schedule, Para 1:**

**Insertion of the words “on any matter” after the words “any such agreement” in the third line, to make the rights and duties of partners all inclusive in nature.**

**(ii) Second Schedule, Para 5(1):**

**Though the para 5(1) empowers the Registrar to refuse registration of a LLP, there is no provision in the Bill to appeal against the Registrar’s decision. There is a need to designate an appellate authority comprising Regional Director/the Company Law Board, till such time the NCLT and the NCLAT become functional.**

**(iii) Second Schedule, Para 6:**

**As already recommended with reference to Clause 14(b) of the Bill, the term 'property' appearing in para 6 needs to distinguish between tangible and intangible property.**

**(iv) Third Schedule para 4 (a) (ii) and Fourth Schedule, Para 5 (a) (ii)**

**There are companies registered under the Companies Act, 1956 and "existing companies" registered under earlier Acts. In order to widen the ambit of para 4(a) (ii) of Third Schedule and para 5(a) (ii) of the Fourth Schedule to cover all companies, the words "under the Companies Act, 1956" should be omitted.**

**L. CONSEQUENTIAL AMENDMENTS IN OTHER STATUTES**

153. There is need to harmonise the provisions of the LLP Bill in line with other economic legislations like the Foreign Exchange Management Act, 1999 (FEMA) and Foreign Direct Investment (FDI) Guidelines by appropriate amendments for full realization of the objectives of the LLP Bill. This aspect was emphasized by FICCI and PHDCCI.

154. According to the Ministry of Commerce and Industry (note dated 26 September, 2006) for full realization of the objectives of the proposed Limited Liability Partnership Bill, corresponding amendments will be required in the Regulatory Acts governing the various professional services so that these can be aligned with the objectives of the proposed Bill. For example, in case of the legal profession, an amendment would be required in the Advocates Act. Partnerships are the only permitted model of practice for law firms in India and other modes of practice like LLP is not permitted. Multidisciplinary practice with other professions is also not allowed in the legal profession. Further, advertising is also not allowed as per the Advocates Act. There is also a limitation on the number of partners (Section 11 of the Companies Act).

155. The Ministry of Corporate Affairs have responded in this regard as follows:

"The proposed LLP Bill is an enabling legislation. In general, it provides a new business structure for use in economic/commercial activity for all persons. Different enactments regulating various

businesses or professional entities or activities may take statutory notice of entities availing the LLP form for the purpose of their own regulation.

For this purpose, only statutory notice in other enactments may need to be taken, as required, by amendment of the respective Acts. This may require consequential amendments in:—

- (a) statutes regulating any specific profession, trade or activity,
- (b) other enactments such as the Income Tax Act where statutory notice of the emergence of the new form would have to be taken for taxation purposes.

However, for such consequential amendments to take place, the legal entity of LLP would have to be constituted first by enactment of this Bill.

It may be mentioned that this process has already been initiated in the case of professions of Chartered Accountants, Company Secretaries and Cost and Work Accountants with amendments made in 2006 in the Chartered Accountants Act, 1949, the Cost and Works Accountants Act, 1959 and the Company Secretaries Act, 1980 whereby the above professionals are allowed for multi-disciplinary combinations”.

156. The Ministry of Corporate Affairs have also stated that enabling provisions for conversion of LLPs into general partnership would be required to be made in the Indian Partnership Act, 1932. Similarly, provisions for conversion of LLPs into private/unlisted companies would be required to be made in the Companies Act, 1956.

**157. The Committee observe that for full realisation of the objectives of the LLP Bill, statutory notice in other enactments need to be taken of entities availing the LLP form. This would require consequential amendments in statutes regulating any specific profession, trade or activity such as Advocates Act and in other enactments such as the Income Tax Act for taxation purposes. The process of amendments has reportedly been already initiated with amendments in the respective acts in the case of professions of Chartered Accountants, Company Secretaries and Cost and Work Accountants. The Committee desire that the question of consequential amendments in other Acts be taken up with the concerned Ministries to ensure that there are no bottlenecks in realizing the objectives of the LLP Bill.**

## M. TAX TREATMENT OF LLPs

158. As regards taxation regime for LLPs, the Committee on Regulation of Private Companies and Partnerships (headed by Shri Naresh Chandra) had recommended as follows:

“Any asset held by an LLP, or any tax chargeable on gains made shall be treated as held by partners or gains made by the partners, and not by the LLP itself. Under the LLP Act in UK, an LLP enjoys ‘pass through’ status and is not taxable as such. This Committee would like to recommend the same ‘pass through’ status for LLPs in India.

The LLPs should be governed by a taxation regime that taxes the partners as individuals, rather than taxing the LLP itself, *i.e.*, the LLPs should be treated in the same manner as the firm under the tax laws”.

159. Asked about the Government’s perception on the Naresh Chandra Committee’s recommendations on the tax structure for LLP firms *vis-a-vis* the proposed legislation permitting the creation of these new type of corporate entities, the Ministry of Corporate Affairs, informed, *inter alia* as follows in reply:

“The recommendation made by Naresh Chandra Committee was examined by the Ministry. It is submitted that Indian LLPs are expected to be formed in a wide range of activities including in services and technology related sectors. In time, they would also extend their operations beyond Indian borders and have international presence as in the case of LLPs in other countries. In context of the above, the taxation regime may have a significant impact on the viability and attractiveness of LLPs since it would determine the manner in which the LLP and its individual partners would be taxed, address double taxation issues and provide for carry forward of losses in the event of conversion from other forms of business to LLP and *vice versa*.

The attractiveness of LLPs as a suitable vehicle for venture capital would also require a tax treatment that provides appropriate incentives for innovation and investment. It would, therefore, be necessary to provide for a regime of taxation of LLPs with clarity on the above issues and in a manner that does not adversely affect the competitiveness of Indian LLPs internationally.

It may be mentioned that the LLP Act 2000 of the UK provides for treatment of LLPs for the purpose of Taxation. In the UK, income is taxed at the hands of the Partners with LLP structure being treated as “pass through” for the purpose”.

160. The Concept Paper published by the Ministry of Corporate Affairs prior to the introduction of the LLP Bill, 2006, provides *inter alia* as under on the issue of tax treatment of LLPs:

“...the partners of an LLP which is carrying on a business with a view to profit are treated for the purposes of income tax and capital gains tax as if they were partners carrying on a business in partnership, despite the fact that an LLP is a body corporate. It also provides that the property of the LLP shall be treated for those purposes as property of its partners. This ensures that partners will be individually liable to tax on their share of the profits of the trade, profession or business carried on by the LLP.

Further, the assets of the LLP shall be treated as assets held by the partners for the purpose of taxing capital gains. This ensures that the partners of the LLP, rather than the LLP itself, will be liable to tax for capital gains on the disposal of LLP assets. The chapter brings LLPs in line with the approach adopted for partnerships, which similarly treats assets as held by the partners rather than by the partnership.”

161. With reference to the ‘Pass through Status taxation design” in particular, as proposed and the desirable tax structure for LLP firms, the FICCI, in their memorandum, submitted *inter alia* as under:

“...While such a taxation regime is in line with those in vogue in developed countries like USA and UK, it is felt that such a taxation may become quite cumbersome and complicated especially where partners are too many, there being no cap on the number of partners of LLP.

Also, being a pass through entity, the LLP may not qualify as tax resident of India and would not, therefore, be entitled to benefits under the bilateral tax treaties between India and other countries in case of cross border transactions. In this perspective, it is suggested that LLP should be liable to tax as such; and income from LLP should be exempt in the hands of the partners. This is particularly crucial in as much as Section 3 of the Bill defines a limited liability partnership as a body corporate having legal entity separate from that of its partners. Since companies are liable to

income tax as a legal taxable entity and its shareholders are tax exempt in respect of dividend income, there is no rationale in having a different tax system for LLPs.

It is also suggested that where an LLP succeeds a business previously carried on by an existing partnership/private company, it should not be treated as cessation of trade for income tax purposes and capital gains relief on transfer of assets should be allowed on conversion. Also, unabsorbed losses of predecessor be allowed to be carried forward and set off by the successor *i.e.* LLP. The relevant sections will need to be amended accordingly. From an Exchange Control/FDI perspective, it needs to be clarified that LLPs would be “eligible entities” for receiving foreign investment under the automatic route”.

162. On the tax structure of LLPs, the PHDCCI, however, in their written submission on the LLP Bill, stated as follows:

“The success of limited liability partnership form of organization would depend to a large extent on it being a tax efficient structure. Particularly in cases of large projects undertaken by business/industry where several agencies get together or form a consortium for executing the project, clarity in taxation aspect would be important.

The provisions of Income Tax Act, 1961 should be amended for providing tax benefits to LLP. While amending the Income Tax Act, various issues including capital gains arising on transfer or succession of business, carry forward and set off of losses and unabsorbed depreciation, tax implications of transactions between LLP and partners and *inter se* partners, taxation issues relating to multi-layer LLP, quantification of income, allocation of losses, etc. will need to be thoroughly examined and debated.

Partners of a LLP for the purpose of income tax and capital gains tax should be treated as if they were partners carrying on a business in partnership. Despite the fact that an LLP is a body corporate, for income tax purposes, the property of the LLP should be treated as property of its partners, so as to ensure that partners will be individually liable to tax on their share of the profits in the business of the LLP.

The LLP should also be given recognition in the Double Taxation Avoidance Agreements”.

163. On the other hand, the Institute of Chartered Accountants of India (ICAI), have, in their Memorandum, expressed the need for providing the LLPs, the option of choosing the applicable taxation structure. The submission made by the ICAI in this regard, reads as under:

“The Statement of Object and Reasons should contain the principle that the LLP should have an option whether they will be taxed as corporate or in the hands of partners. Similarly, it should contain the principle on carry forward of losses and stamp duty. This will communicate the good intention of the Government”.

164. Elaborating on the aspect of providing an option to the LLP firms to choose the tax structure, a representative of the ICAI stated as follows in the course of personal hearing of the Committee:

“An option is necessarily to be given either to be taxed in the hands of the corporates or in the hands of the partners concerned directly without taxing the corporate. We would request you to recommend that option. The point is whether it comes as a part of the LLP Bill or arising out of the recommendation, it comes under the Income-Tax Act. It should be known simultaneously. We are not worried where it is provided for. But it has to be there in the substantive law. This august Parliamentary Committee can recommend that. It should be there in the law itself”.

165. In response to a question on the Governments’ perception/ policy proposals contemplated on taxation of LLP firms, mainly in the light of the varied suggestions received in this regard, the Ministry of Corporate Affairs, in reply stated as follows:

“In India, taxation related matters are dealt with under the Income Tax Act, 1961. Therefore, no specific provision has been made in the LLP Bill. This aspect would need to be addressed keeping the factors indicated in above suggestions as well as report of expert bodies such as Naresh Chandra Committee in view, at the time when consequential amendments are made in the Income Tax Act, 1961 once the LLP Bill is enacted. However, it is felt that the taxation regime should be such that Indian LLPs do not suffer any discrimination or disadvantage in competition with foreign LLPs. It is also felt that with the availability of information technology and growing emphasis on self-regulation, there is a need to provide flexibility to entrepreneurs in opting for taxation structure that is relevant to the type of business and affords ease of compliance”.

166. The Committee find that there are four different views regarding tax regime for LLPs. According to Naresh Chandra Committee, the LLP should be governed by a taxation regime that taxes the partners as individuals rather than taxing the LLP itself. On the other hand, FICCI has held that LLP should be liable to tax as such and should be entitled to benefits under the bilateral tax treaties between India and other countries. PHDCCI holds that for the purpose of income tax and capital gains tax, partners in LLP be taxed as individuals and for the purpose of Double Taxation Avoidance Agreements, LLP should be given recognition. The ICAI and the Ministry of Corporate Affairs are in favour of giving an option to LLP as to whether they will be taxed as corporate or in the hands of partners. Having considered all the above views, the Committee recommend that there is a need to provide flexibility to entrepreneurs in opting for taxation structure that is relevant to the type and size of their business and at the same time it should be ensured that the taxation regime is such that Indian LLPs do not suffer any discrimination or disadvantage in competition with foreign LLPs.

167. The Committee note the stand of the Ministry of Corporate Affairs that in India, taxation related matters are dealt with only under the Income Tax Act, 1961, unlike UK which provides for treatment of LLPs for the purpose of taxation in the LLP Act itself. The Committee, therefore, desire that consequential amendments in the Income Tax Act and other Acts be undertaken in the light of the Committee's views stated in the preceding paragraph.

NEW DELHI;  
22 November, 2007  

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1 Agrahayana, 1929 (Saka)

ANANTH KUMAR,  
Chairman,  
Standing Committee on Finance.

MINUTES OF THE TWENTY-SIXTH SITTING OF THE  
STANDING COMMITTEE ON FINANCE

The Committee sat on Thursday, the 01 June, 2007 from 1100 to  
1310 hrs.

PRESENT

Shri Ananth Kumar—*Chairman*

MEMBERS

*Lok Sabha*

2. Shri Gurudas Dasgupta
3. Shri Vijoy Krishna
4. Shri Bhartruhati Mahtab
5. Shri Madhusudan Mistry
6. Shri Rupchand Pal
7. Shri P.S. Gadhavi
8. Shri Jyotiraditya Madhavrao Scindia
9. Shri M.A. Kharabela Swain
10. Shri Bhal Chand Yadav

*Rajya Sabha*

11. Shri Santosh Bagrodia
12. Shri Rashid Alvi
13. Shri Mangani Lal Mandal
14. Shri C. Ramachandraiah

SECRETARIAT

1. Dr. (Smt.) P.K. Sandhu — *Additional Secretary*
2. Shri P.K. Grover — *Joint Secretary*
3. Shri S.B. Arora — *Deputy Secretary*
4. Shri T.G. Chandrasekhar — *Deputy Secretary*

WITNESSES

**Ministry of Corporate Affairs**

1. Shri Anurag Goel, Secretary
2. Shri Jitesh Khosla, Joint Secretary
3. Shri Diwan Chand, Director (Inspection & Investigation)

2. At the outset, the Chairman welcomed the representatives of the Ministry of Corporate Affairs to the sitting of the Committee and invited their attention to the provisions contained in Direction 55 of the Directions by the Speaker.

3. Then, the representatives of the Ministry of Corporate Affairs briefed the Committee on the various provisions contained in the Limited Liability Partnership Bill, 2006. The Members asked clarificatory questions which were replied to by the representatives. The Chairman, then, directed the representatives that the information with regard to queries of the Members which was not readily available with them might be furnished to the Committee later on.

4. The main issues discussed during the meeting were (i) definition of limited partnership, (ii) foreign partnership under LLP, (iii) difference between LLP and partnership firm, (iv) penalty/punishment for contravention of provisions of the Bill, (v) filing of document with ROC, and (vi) audit etc.

5. The briefing was concluded.

6. A verbatim record of proceedings has been kept.

*The witnesses then withdrew.*

The Committee then selected the subject "Implementation of Twenty Point Programme (TPP)—2006" for examination, in addition to the subjects already selected for examination.

*The Committee then adjourned.*

MINUTES OF THE TWENTY-NINTH SITTING OF THE  
STANDING COMMITTEE ON FINANCE

The Committee sat on Tuesday, the 27th June, 2007 from 1500 to  
1715 hrs.

PRESENT

Shri Ananth Kumar—*Chairman*

MEMBERS

*Lok Sabha*

2. Shri Jaswant Singh Bishnoi
3. Shri Gurudas Dasgupta
4. Shri Bhartruhati Mahtab
5. Shri P.S. Gadhavi
6. Shri Jyotiraditya Madhavrao Scindia
7. Shri A.R. Shaheen
8. Shri G.M. Siddeshwara
9. Shri M.A. Kharabela Swain

*Rajya Sabha*

10. Shri Raashid Alvi
11. Shri Yashwant Sinha
12. Shri Mangani Lal Mandal
13. Shri S. Anbalagan

SECRETARIAT

1. Shri P.K. Grover — *Joint Secretary*
2. Shri S.B. Arora — *Deputy Secretary*
3. Shri T.G. Chandrasekhar — *Deputy Secretary*

WITNESSES

1. THE INSTITUTE OF COMPANY SECRETARIES OF INDIA  
(i) Ms. Preeti Malhotra, President

- (ii) Shri Nesar Ahmad, Council Member
  - (iii) Shri P.K. Mittal, Council Member
  - (iv) Shri N.K. Jain, Secretary & CEO
2. THE INSTITUTE OF COST AND WORKS ACCOUNTANTS OF INDIA
- (i) Shri Dhananjay V. Joshi, President
  - (ii) Shri Chandra Wadhwa, Vice-President
3. THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
- (i) Shri Vinod Jain, Fellow Chartered Accountant, Central Council member
  - (ii) Shri Harinderjit Singh, Chartered Accountant, Central Council member

2. At the outset, the Chairman welcomed the representatives of the of (i) the Institute of Chartered Accountants of India (ii) the Institute of Cost and Works Accountants of India and (iii) the Institute of Company Secretaries of India to the sitting of the Committee and invited their attention to the provisions contained in Direction 55 of the Directions by the Speaker.

3. The Committee then took oral evidence of the representatives on the various provisions contained in the Limited Liability Partnership Bill, 2006. The Members asked clarificatory questions which were replied to by the representatives. The Chairman, then, directed the representatives that the information with regard to queries of the Members which was not readily available with them might be furnished to the Committee later on.

4. The main issues discussed during the meeting related to categorization of Limited Liability Partnership (LLP), penalties for non-compliance, audit, taxation, single member LLP etc.

5. The evidence was concluded.

6. A verbatim record of proceedings has been kept.

*The witnesses then withdrew.*

*The Committee then adjourned.*

MINUTES OF THE THIRTIETH SITTING OF THE  
STANDING COMMITTEE ON FINANCE

The Committee sat on Wednesday, the 18th July, 2007 from 1100 to  
1240 hrs.

PRESENT

Shri Ananth Kumar—*Chairman*

MEMBERS

*Lok Sabha*

2. Shri Jaswant Singh Bishnoi
3. Shri Gurudas Dasgupta
4. Shri Shyama Charan Gupta
5. Shri Vijoy Krishna
6. Shri A. Krishnaswamy
7. Shri Bhartruhari Mahtab
8. Shri Madhusudan Mistry
9. Shri Rupchand Pal
10. Shri P.S. Gadhavi
11. Shri R. Prabhu
12. Shri K.S. Rao
13. Shri M.S. Reddy
14. Shri Jyotiraditya Madhavrao Scindia
15. Shri G.M. Siddeshwara
16. Shri M.A. Kharabela Swain
17. Shri Bhal Chand Yadav

*Rajya Sabha*

18. Shri Santosh Bagrodia
19. Shri Raashid Alvi
20. Shri Yashwant Sinha
21. Shri Mahendra Mohan
22. Shri Mangani Lal Mandal
23. Shri Vijay J. Darda
24. Shri S. Anbalagan
25. Shri Moinul Hassan

SECRETARIAT

1. Dr. (Smt.) P.K. Sandhu — *Additional Secretary*
2. Shri P.K. Grover — *Joint Secretary*
3. Shri S.B. Arora — *Deputy Secretary*
4. Shri T.G. Chandrasekhar — *Deputy Secretary*

WITNESSES

1. PHD CHAMBER OF COMMERCE AND INDUSTRY

- (i) Shri Sanjay Bhatia, President
- (ii) Shri Satish Bagrodia, Vice President
- (iii) Ms. Bhavna Kohil, Advocate, Bhasin & Co. & Member, PHDCCI
- (iv) Shri Krishan Kalra, Secretary General
- (v) Ms. Shalini Mathur, Joint Secretary

2. CONFEDERATION OF INDIAN INDUSTRY (CII)

- (i) Mr. Nishith Desai, Managing Partner, Nishith Desai Associates
- (ii) Ms. Gowree Gokhale, Senior Associate, Nishith Desai Associates
- (iii) Mr. Rajesh Menon, Senior Director, Confederation of Indian Industry
- (iv) Ms. Abha Seth, Deputy Director, Confederation of Indian Industry
- (v) Mr. Vikram Badshah, Head, Public Policy Confederation of Indian Industry

3. ASSOCHAM

Mr. Sumant Batra, Partner  
Kesar Dass B. & Associates

2. At the outset, the Chairman welcomed the representatives of the PHD Chamber of Commerce and Industry, Confederation of Indian Industry (CII), and ASSOCHAM to the sitting of the Committee and invited their attention to the provisions contained in Direction 55 of the Directions by the Speaker.

3. The Committee then took oral evidence of the representatives on the various provisions contained in the Limited Liability Partnership Bill, 2006. The representatives explained their major concerns on certain

provisions of the Bill. Then, the Members asked clarificatory questions which were replied to by the representatives. The Chairman, then, directed the representatives that the information with regard to queries of the Members which was not readily available with them might be furnished to the Committee by 25<sup>th</sup> July, 2007 with specific suggestions in regard to various clauses of the Bill.

4. The main issues discussed during the meeting related to practice followed globally with particular reference to prominent developing countries, allowing of foreign legal firms, covering of small and medium enterprises, venture capital, foreign and designated partners, insurance cover, investigation etc.

5. The evidence was concluded.

6. A verbatim record of proceedings has been kept.

*The witnesses then withdrew.*

*The Committee then adjourned.*

MINUTES OF THE SECOND SITTING OF THE  
STANDING COMMITTEE ON FINANCE

The Committee sat on Thursday, the 30 August, 2007 from 1700 to 1745 hrs.

PRESENT

Shri Ananth Kumar—*Chairman*

MEMBERS

*Lok Sabha*

2. Shri Bhartruhati Mahtab
3. Shri Rupchand Pal
4. Shri K. S. Rao
5. Shri Lakshman Seth
6. Shri G. M. Siddeshwara
7. Shri M. A. Kharabela Swain

*Rajya Sabha*

8. Shri Santosh Bagrodia
9. Shri Mahendra Mohan
10. Shri Moinul Hassan

SECRETARIAT

1. Shri P.K. Grover — *Joint Secretary*
2. Shri S.B. Arora — *Deputy Secretary*
3. Shri T.G. Chandrasekhar — *Deputy Secretary*

WITNESSES

MINISTRY OF CORPORATE AFFAIRS

1. Shri Anurag Goel, Secretary
2. Shri Jitesh Khosla, Joint Secretary

2. At the outset, the Chairman welcomed the representatives of the Ministry of Corporate Affairs to the sitting of the Committee and invited their attention to the provisions contained in Direction 55 of the Directions by the Speaker.

3. The Committee then took oral evidence of the representatives of the Ministry of Corporate Affairs on the various provisions contained in the Limited Liability Partnership Bill, 2006. The representatives explained their major concerns on certain provisions of the Bill. Then, the Members asked clarificatory questions which were replied to by the representatives. The Chairman, then, directed the representatives that the information with regard to queries of the Members which was not readily available with them might be furnished to the Committee within a week's time.

4. The main issues discussed during the meeting related to tax treatment, mandatory insurance, consequential amendments in other acts, Partner Identification Number and applicability of LLP form to Private Equities (PEs).

5. The evidence was concluded.

6. A verbatim record of proceedings has been kept.

*The witnesses then withdrew.*

*The Committee then adjourned.*

MINUTES OF THE EIGHTH SITTING OF THE  
STANDING COMMITTEE ON FINANCE

The Committee sat on Thursday, the 22nd November, 2007 from  
1600 hrs. to 1720 hrs.

PRESENT

Shri Ananth Kumar—*Chairman*

MEMBERS

*Lok Sabha*

2. Shri Gurudas Dasgupta
3. Shri A. Krishnaswamy
4. Shri Rupchand Pal
5. Shri G. M. Siddeshwara
6. Shri M. A. Kharabela Swain
7. Shri Bhal Chand Yadav

*Rajya Sabha*

8. Shri S. S. Ahluwalia
9. Shri Vijay J. Dadra
10. Shri S. Anbalagan

SECRETARIAT

1. Dr. (Smt.) P. K. Sandhu — *Additional Secretary*
2. Shri A. Louis Martin — *Joint Secretary*
3. Shri T. G. Chandrasekhar — *Deputy Secretary*

2. At the outset, the Chairman welcomed the Members to the sitting of the Committee and requested them to give their suggestions on the recommendations contained in the draft report on the Limited Liability Partnership Bill, 2006.

3. The Committee then took up for consideration the draft report on the Limited Liability Partnership Bill, 2006. The Committee, after deliberation, adopted the draft report with the modifications/ amendments, shown in the Annexure.

4. The Committee authorized the Chairman to finalise the report in the light of the modifications suggested and also to make consequential changes and present the report to Parliament.

*The Committee then adjourned.*

ANNEXURE

[MODIFICATIONS/AMENDMENTS MADE BY THE STANDING  
COMMITTEE ON FINANCE IN THEIR DRAFT REPORT ON  
THE LIMITED LIABILITY PARTNERSHIP BILL, 2006 AT  
THEIR SITTING HELD ON 22ND NOVEMBER, 2007]

Page	Para	Line	Amendments/Modifications
1	2	3	4
3	9	7	<p><i>For</i></p> <p>'....certain lacunae and infirmities in the Bill.'</p> <p><i>Read</i></p> <p>'....certain grave lacunae and serious infirmities in the Bill.'</p>
6	22	6	<p><i>After</i></p> <p>'to cover a wide range of activities such as services,'</p> <p><i>Add</i></p> <p>'as may be specified,'</p>
12	38	6	<p><i>For</i></p> <p>'....a suitable provision be made in the Bill to address this situation'</p> <p><i>Read</i></p> <p>'....a suitable provision be made in the Bill by amending the Clause to address this situation.'</p>
14	42	3	<p><i>For</i></p> <p>'trust'</p> <p><i>Read</i></p> <p>'recommend'</p>

1	2	3	4
14	45	3	<p><i>For</i></p> <p>'....made answerable only when he is responsible.'</p> <p><i>Read</i></p> <p>'....made answerable only when he is determined as responsible.'</p>
23	68	2	<p><i>For</i></p> <p>'...between tangible and intangible property.'</p> <p><i>Read</i></p> <p>'...between tangible and intangible property as defined in other statutes.'</p>
30	90	3	<p><i>After</i></p> <p>'Unless this requirement'</p> <p><i>Add</i></p> <p>'of giving the notice in writing'</p>
30	91	2	<p><i>For</i></p> <p>'The sub-clause 2 of Clause 24, which deals with grounds for a person to cease to be a partner of a LLP, has not incorporated this ground.'</p> <p><i>Read</i></p> <p>'The sub-clause 2 of Clause 24, which deals with grounds for a person to cease to be a partner of a LLP, has not incorporated this ground as specified in the Companies Act, 1956.'</p>
31	98	8	<p><i>Insert at the end of the sentence</i></p> <p>'without fail'</p>
34	102	4	<p><i>For</i></p> <p>'....suitable provision be incorporated in this regard.'</p> <p><i>Read</i></p> <p>'....suitable provision be incorporated in this regard as stipulated in the Companies Act, 1956.'</p>

1	2	3	4
36	109	3	<p><i>For</i></p> <p>‘...the Committee note the assurance of the Ministry of Corporate Affairs that certification requirements will be reviewed and incorporated appropriately.’</p> <p><i>Read</i></p> <p>‘...the Committee recommend the certification requirements are reviewed and provisions incorporated appropriately.’</p>
39	117	2	<p><i>For</i></p> <p>‘...such as ‘Corporation’ and ‘body corporate’ in Clause 40(1) (c) be avoided to maintain uniformity in the usage of terms throughout the legislation.’</p> <p><i>Read</i></p> <p>‘...such as ‘Corporation’ and ‘body corporate’ in Clause 40(1) (c) be avoided, and the word ‘body corporate’ used uniformly throughout the legislation.’</p>
41	141	3	<p><i>For</i></p> <p>‘Exclusion of past conduct of LLP from the purview of the sub-clause is a serious lacuna. The Committee desire that this Lacuna be rectified suitably.’</p> <p><i>Read</i></p> <p>‘The Committee recommend the past conduct of a LLP should be brought under the purview of the sub-clause.’</p>
44	127	11	<p><i>Delete</i></p> <p>‘The Committee wish to point out that the contention of the Ministry of Corporate Affairs does not explain as to why a provision similar to that of Sec. 575 of the Companies Act, 1956 should not be incorporated in the LLP Bill.’</p>

1	2	3	4
44	127	14	<p><i>For</i></p> <p>'are of the firm view'</p> <p><i>Read</i></p> <p>'desire that'</p>
46	131	9	<p><i>For</i></p> <p>'other'</p> <p><i>Read</i></p> <p>'similar'</p>
49	141	10	<p><i>After</i></p> <p>'The Committee desire that suitable transitional provision in this regard be incorporated in the Bill.'</p> <p><i>Add</i></p> <p>'The Committee desire that suitable transitional provision in this regard be incorporated in the Bill, till such time the NCLT and the NCLAT become functional.'</p>
53	152	11	<p><i>After</i></p> <p>'authority'</p> <p><i>Insert</i></p> <p>'comprising Regional Director/the Company Law Board, till such time the NCLT and NCLAT become functional.'</p>
56	157	7	<p><i>Delete</i></p> <p>'According to FICCI and PHDCCI, there is need to harmonise the provisions of LLP Bill with other economic legislations like Foreign Exchange Management Act, 1999.'</p>
61	166	12	<p><i>For</i></p> <p>'....are inclined to agree with the Ministry of Corporate Affairs'</p> <p><i>Read</i></p> <p>'....recommend'</p>

THE LIMITED LIABILITY PARTNERSHIP BILL, 2006

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ARRANGEMENT OF CLAUSES

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CLAUSES

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Bill No. CXI of 2006

THE LIMITED LIABILITY PARTNERSHIP BILL, 2006

A

BILL

*to make provisions for the formation and regulation of limited liability partnerships and for matters connected therewith or incidental thereto.*

BE it enacted by Parliament in the Fifty-seventh Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Limited Liability Partnership Act, 2006. Short title, extent and commencement.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification, in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of the provision.

2. In this Act, unless the context otherwise requires,— Definitions.

(a) “address” in relation to a partner of a limited liability partnership, means—

(i) if an individual, his usual residential address; and

(ii) if a body corporate, the address of its registered office;

- 1 of 1956 (b) "Appellate Tribunal" means the National Company Law Appellate Tribunal constituted under sub-section (1) of section 10 FR of the Companies Act, 1956;
- 1 of 1956 (c) "body corporate" means a company as defined in section 3 of the Companies Act, 1956 and includes,—
- (i) a limited liability partnership registered under this Act;
  - (ii) a limited liability partnership incorporated outside India; and
  - (iii) a company incorporated outside India,
- but does not include—
- (i) a corporation sole;
  - (ii) a co-operative society registered under any law relating to co-operative societies; and
  - (iii) any other body corporate (not being a company as defined in section 3 of the Companies Act, 1956 or a limited liability partnership as defined in this Act), which the Central Government may, by notification in the Official Gazette, specify in this behalf;
- 1 of 1956 (d) "business" includes every trade, profession and occupation;
- 38 of 1949 (e) "chartered accountant" means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;
- (f) "company secretary" means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;
- 23 of 1959 (g) "cost accountant" means a cost accountant as defined in clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;

(h) “designated partner” means any partner designated as such pursuant to section 7;

(i) “financial year” in relation to a limited liability partnership means the period from 1st day of April of a year to the 31st day of March of the following year:

Provided that in the case of a limited liability partnership incorporated after the 30th September of a year, the financial year may end on the 31st March of the year next following that year;

(j) “foreign limited liability partnership” means a limited liability partnership that is formed, registered or incorporated outside India and which establishes a place of business within India;

(k) “limited liability partnership” means a partnership formed and registered under this Act;

(l) “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 limited liability partnership;

(m) “name”, in relation to a partner of a limited liability partnership, means—

(i) if an individual, his forename, middle name and surname; and

(ii) if a body corporate, its registered name;

(n) “partner”, in relation to a limited liability partnership, means any person who has been admitted as a partner in the limited liability partnership in accordance with the limited liability partnership agreement;

(o) "prescribed" means prescribed by rules made under this Act;

(p) "Registrar" means a Registrar, or any Additional, a Joint, a Deputy or an Assistant Registrar, having the duty of registering companies under the Companies Act, 1956;

1 of 1956

(q) "Tribunal" means the National Company Law Tribunal constituted under sub-section (1) of section 10FB of the Companies Act, 1956.

1 of 1956

## CHAPTER II

### APPLICABILITY

Limited liability partnership.

3. (1) A limited liability partnership is a body corporate formed and incorporated under this Act and which has legal entity separate from that of its partners.

(2) A limited liability partnership shall have perpetual succession.

(3) Any change in the partners of a limited liability partnership shall not affect the existence, rights or liabilities of the limited liability partnership.

Non-applicability of the Indian Partnership Act, 1932.

4. Save as otherwise provided, the provisions of the Indian Partnership Act, 1932 shall not apply to a limited liability partnership.

9 of 1932

Partners and their Identification Number.

5. (1) Any individual or body corporate may be a partner in a limited liability partnership.

(2) Every designated partner of a limited liability partnership shall obtain a Partner Identification Number (PIN) from the Central Government and the provisions of sections 266A to 266G (both inclusive) of the Companies Act, 1956 shall apply *mutatis mutandis* for the said purpose.

1 of 1956

Minimum number of partners.

6. (1) Every limited liability partnership shall have at least two partners.

(2) If at any time the number of partners of a limited liability partnership is reduced below two and the limited liability partnership carries on business for more than six months while the number is so reduced, the person who is the only partner of the limited liability partnership during the time that it so carries on business after those six months and has the knowledge of the fact that it is carrying on business with him alone, shall be liable personally for the obligations on the limited liability partnership incurred during that period.

7. (1) Every limited liability partnership shall have at least two designated partners who are individuals and at least one of them shall be a resident in India:

Minimum number of designated partners.

Provided that in case of a limited liability partnership in which all the partners are body corporates, at least two partners shall nominate their respective individuals who are to act as “designated partners” and one of the nominees shall be a resident in India.

(2) For the purpose of this section, “resident in India” means a person who has stayed in India for a period of not less than one hundred and eighty-two days during the immediately preceding one year.

(3) Every limited liability partnership shall ensure that the particulars of every individual who agrees to act as a designated partner of the limited liability partnership and his consent to act as such is filed with the Registrar in such form and manner as may be prescribed within thirty days of the appointment of the designated partner.

(4) An individual eligible to be designated partner shall satisfy such conditions and requirements as may be prescribed.

Designated partners.

8. (1) If the incorporation document specifies as to who are to be designated partners—

(a) such person shall be the designated partners on incorporation; and

(b) any partner may become a designated partner by and in accordance with limited liability partnership agreement and a partner may cease to be a designated partner in accordance with the limited liability partnership agreement.

(2) A limited liability partnership may appoint a designated partner within thirty days of a vacancy arising for any reason:

Provided that if no designated partner is appointed, or if at any time there is only one designated partner, each partner shall be deemed to be a designated partner.

(3) If the incorporation document states that every person who from time to time is a partner of the limited liability partnership is a designated partner, every partner shall be designated partner.

Changes in designated partners and their liabilities.

9. (1) Every limited liability partnership shall appoint an individual (who is resident in India) as designated partner within thirty days from the date on which a person ceases to be a designated partner and the provisions of sub-section (3) and sub-section (4) of section 7 shall apply in respect of the new partner.

(2) A designated partner shall be—

(a) answerable for the doing of all acts, matters and things as are required to be done by the limited liability partnership in respect of compliance of the provisions of this Act including filing of any document, return, statement and the like report pursuant to the provisions of this Act and as may be specified in the limited liability partnership agreement; and

(b) liable to all penalties imposed on the limited liability partnership for any contravention of those provisions.

10. (1) If the limited liability partnership contravenes the provisions of sub-section (1) of section 7, the limited liability partnership and its every partner shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to five lakh rupees.

Punishment for contravention of sections 7, 8 and 9.

(2) If the limited liability partnership contravenes the provisions of sub-section (3) and sub-section (4) of section 7, section 8 or section 9 the limited liability partnership and its every partner shall be a punishable with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees.

### CHAPTER III

#### INCORPORATION

11. (1) For a limited liability partnership to be incorporated,—

Incorporation document.

(a) two or more persons associated for carrying on a lawful business with a view to profit shall have subscribed 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 with a statement in the prescribed form, made by either an advocate, or a Company Secretary or a Chartered Accountant, who is engaged in the formation of the limited liability partnership and by anyone who subscribed his name to the incorporation document,

that all the requirements of this Act and the rules made thereunder have been complied with in respect of incorporation and matters precedent and incidental thereto.

(2) 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.

(3) If a person makes a statement under clause (c) of sub-section (1) which he—

(a) knows to be false; or

(b) does not believe to be true,

he 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.

Incorporation  
by  
registration.

12. (1) When the requirements imposed by clauses (b) and (c) of sub-section (1) of section 11 have been complied with, the Registrar shall

retain the incorporation document and, unless the requirement imposed by clause (a) of that sub-section has not been complied with, he shall within a period of fourteen days—

(a) register the incorporation document;  
and

(b) give a certificate that the limited liability partnership is incorporated by the name specified in the incorporation document.

(2) The Registrar may accept the statement delivered under clause (c) of sub-section (1) of section 11 as sufficient evidence that the requirement imposed by clause (a) of that sub-section has been complied with.

(3) The certificate shall be signed by the Registrar and authenticated by his official seal.

(4) The certificate is conclusive evidence that the limited liability partnership is incorporated by the name specified in the incorporation document.

13. (1) Every limited liability partnership shall have a registered office to which all communications and notices may be addressed and where they shall be received.

Registered office.

(2) A document may be served on a limited liability partnership or a partner or designated partner thereof by sending it by post under a certificate of posting or by registered post or by any other mode, which may be prescribed, or by leaving at its registered office.

(3) A limited liability partnership may change the address of its registered office by filing with the Registrar notice of such change in such form and manner as may be prescribed and any such change shall take effect only upon such filing.

(4) If the limited liability partnership contravenes any provisions of this section, the

limited liability partnership and its every partner shall be punishable with fine which shall not be less than two thousand rupees but which may extend to twenty-five thousand rupees.

Effect of incorporation.

14. A limited liability partnership shall, by its name have the power of—

(a) suing and being sued;

(b) acquiring, owning, holding and developing or disposing of property, both movable and immovable;

(c) having a common seal; and

(d) doing and suffering such other acts and things as bodies corporate may lawfully do and suffer.

Name.

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

(2) No limited liability partnership shall be registered by a name which, in the opinion of the Central Government is—

(a) undesirable;

(b) identical or too nearly resembles to that of any other partnership firm or limited liability partnership or body corporate or a registered trade mark, or a trade mark which is subject of an application for registration, of any other person under the Trade Marks Act, 1999.

47 of 1999.

Reservation of name.

16. (1) A person may apply in such form and manner and accompanied by such fees 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.

(2) Upon receipt of an application under sub-section (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 sub-section (2) of section 15, reserve the name for a period of three months from the date of intimation by the Registrar.

17. (1) Notwithstanding anything contained in sections 15 and 16, where the Central Government is satisfied that a limited liability partnership has been registered (whether through inadvertence or otherwise and whether originally or by a change of name) under a name which—

Rectification of name of a limited liability partnership.

(a) is a name referred to in sub-section (2) of section 15; or

(b) so nearly resembles the name of any other limited liability partnership or body corporate or other name as to be likely to be mistaken for it;

the Central Government may direct the limited liability partnership to change its name, and the limited liability partnership shall comply with the direction within three months after the date of the direction or such longer period as the Central Government may allow.

(2) Any limited liability partnership which fails to comply with a direction given under sub-section (1) shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to five lakh rupees.

18. (1) Any entity which already has a name similar to the name of a limited liability partnership which has been incorporated subsequently, may apply, in such manner as may be prescribed, to the Registrar to give a

Application for direction to change a name in certain circumstances.

direction to any limited liability partnership, on a ground referred to in section 17 to change its name.

(2) The Registrar shall not consider any application under sub-section (1) to give a direction to a limited liability partnership on the ground referred to in clause (b) of sub-section (1) of section 17 unless the Registrar receives the application within twenty-four months from the date of registration of the limited liability partnership under that name.

Change of registered name.

19. Any limited liability partnership may change its name registered with the Registrar by filing with him a notice of such change in such form and manner and on payment of such fees as may be prescribed.

Penalty for Improper use of word "limited liability partnership" or "LLP."

20. If any person or persons carry on business under any new name or title of which the word "Limited Liability Partnership" or "LLP" or any contraction or imitation thereof is or are the last word or words, that person or each of those persons shall, unless duly incorporated as limited liability partnership be punishable with five which may extend to five lakh rupees.

Publication of name and limited liability.

21. (1) Every limited liability partnership shall ensure that its invoices and official correspondence bear the following, namely:—

(a) the name, address and registration number of the limited liability partnership; and

(b) a statement that it is registered with limited liability.

(2) Any limited liability partnership which contravenes the provisions of sub-section (1) shall be punishable with fine which shall not be less than two thousand rupees but which may extend to twenty-five thousand rupees.

## CHAPTER IV

### PARTNERS AND THEIR RELATIONS

22. On the incorporation of a limited liability partnership, the persons who subscribed their names to the incorporation document shall be its partners and any other person may become a partner of the limited liability partnership by and in accordance with the limited liability partnership agreement.

Eligibility to be partners.

23. (1) Save as otherwise provided by this Act, the mutual rights and duties of the partners of a limited liability partnership, and the mutual rights and duties of a limited liability partnership and its partners, shall be governed by the limited liability partnership agreement between the partners, or between the limited liability partnership and its partners.

Relationship of partners.

(2) The limited liability partnership agreement and any changes made therein shall be filed with the Registrar in the form and manner accompanied by such fees as may be prescribed.

(3) An agreement in writing made before the incorporation of a limited liability partnership between the persons who subscribe their names to the incorporation document may impose obligations on the limited liability partnership, provided such agreement is ratified by all the partners after the incorporation of the limited liability partnership.

(4) In the absence of agreement as to any matter, the mutual rights and duties of the partners and the mutual rights and duties of the limited liability partnership and the partners shall be determined by the provisions relating to that matter as are set out in the First Schedule.

24. (1) A person may cease to be a partner of a limited liability partnership in accordance with an agreement with the other partners or,

Cessation of partnership interest.

in the absence of agreement with the other partners as to cessation of being a partner, by giving a notice of not less than thirty days to the other partners of his intention to resign as partner.

(2) A person may also cease to be a partner of a limited liability partnership by his death or by dissolution of the limited liability partnership.

(3) Where a person has ceased to be a partner of a limited liability partnership (hereinafter referred to as “former partner”), the former partner is to be regarded (in relation to any person dealing with the limited liability partnership) as still being a partner of the limited liability partnership unless—

(a) the person has notice that the former partner has ceased to be a partner of the limited liability partnership; or

(b) notice that the former partner has ceased to be a partner of the limited liability partnership has been delivered to the Registrar.

(4) The cessation of a partner from the limited liability partnership does not by itself discharge the partner from any obligation to the limited liability partnership or to the other partners or to any other person which he incurred while being a partner.

(5) Where a partner of a limited liability partnership ceases to be a partner, unless otherwise provided in the limited liability partnership agreement, the former partner or a person entitled to his share in consequence of the death or insolvency of the former partner, shall be entitled to receive from the limited liability partnership an amount—

(a) equal to the capital contribution of the former partner actually made to the limited liability partnership; and

(b) his right to share in the accumulated profits of the limited liability partnership after the deduction of losses of the limited liability partnership, determined as at the date the former partner ceased to be a partner.

(6) A former partner or a person entitled to his share in consequence of the death or insolvency of the former partner shall not have any right to interfere in the management of the limited liability partnership.

25. (1) A limited liability partnership shall ensure that—

Registration of changes in partners.

(a) where a person becomes or ceases to be a partner, notice is filed with the Registrar within thirty days from the date he becomes or ceases to be a partner; and

(b) where there is any change in the name or address of a partner, notice is filed with the Registrar within thirty days of such change.

(2) A notice filed with the Registrar under sub-section (1)—

(a) shall be in such form and accompanied by such fees as may be prescribed;

(b) shall be signed by the designated partner of the limited liability partnership and authenticated in a manner as may be prescribed; and

(c) if it relates to admissions of a partner, shall contain, a statement by the incoming partner that he consents to becoming a partner, signed by him and authenticated in a manner as may be prescribed.

(3) if the limited liability partnership contravenes the provisions of sub-section (1), the limited liability partnership and every

designated partner of the limited liability partnership shall be punishable with fine which shall not be less than two thousand rupees but which may extend to twenty-five thousand rupees.

(4) Any person who ceases to be a partner of a limited liability partnership may himself file with the Registrar the statement referred to in sub-section (2) if he has reasonable cause to believe that the limited liability partnership may not file the statement with the Registrar and in case of any such statement filed by a partner, the Registrar shall obtain a confirmation to this effect from the limited liability partnership unless the limited liability partnership has also filed such statement.

## CHAPTER V

### EXTENT AND LIMITATION OF LIABILITY

Partner as agent.

26. Every partner of a limited liability partnership is the agent of the limited liability partnership, but not of other partners.

Extent of liability of limited partnership.

27. (1) A limited liability partnership is not bound by anything done by a partner in dealing with a person if—

(a) the partner in fact has no authority to act for the limited liability partnership in doing a particular act; and

(b) the person knows that he has no authority or does not know or believe him to be a partner of the limited liability partnership.

(2) The limited liability partnership is liable if a partner of a limited liability partnership is liable to any person as a result of a wrongful act or omission on his part in the course of the business of the limited liability partnership or with its authority.

(3) An obligation of the limited liability partnership whether arising in contract or

otherwise, is solely the obligation of the limited liability partnership.

(4) The liabilities of the limited liability partnership shall be met out of the property or the limited liability partnership.

28. (1) A partner is not personally liable, directly or indirectly for an obligation referred to in sub-section (3) of section 27 solely by reason of being a partner of the limited liability partnership.

Extent of liability of a partner.

(2) The provisions of sub-section (3) of section 27 and sub-section (1) of this section shall not affect the personal liability of a partner for his own wrongful act or omission, but a partner shall not be personally liable for the wrongful act or omission of any other partner of the limited liability partnership.

29. (1) In the event of an act carried out by a limited liability partnership, or any of its partners, with intent to defraud creditors of the limited liability partnership or any other person, or for any fraudulent purpose, the liability of the limited liability partnership and partners who acted with intent to defraud creditors or for any fraudulent purpose shall be unlimited for all or any of the debts or other liabilities of the limited liability partnership:

Unlimited liability in case of fraud.

Provided that in case any such act is carried out by a partner, the limited liability partnership is liable to the same extent as the partner unless it is established by the LLP that such act was without the knowledge or the authority of the LLP.

(2) Where any business is carried on with such intent or for such purpose as mentioned in sub-section (1), every person who was knowingly a party to the carrying on of the business in the manner aforesaid shall be punishable with imprisonment for a term which may extend to two years and with fine which

shall not be less than fifty thousand rupees but which may extend to five lakh rupees.

Whistle blowing.

30. (1) The Court or Tribunal may reduce or waive any penalty leviable against any partner or employee of a limited liability partnership, if it is satisfied that,—

(a) such partner or employee of a limited liability partnership has provided useful information during investigation of such limited liability partnership; or

(b) when any information given by any partner or employee (whether or not during investigation) leads to limited liability partnership or any partner or employee of such limited liability partnership being convicted under this Act or any other Act.

(2) No limited liability partnership or any partner or any employee of any limited liability partnership may be discharged, demoted, suspended, threatened, harassed or in any other manner discriminated against the terms and conditions of his partnership or employment merely because of his providing information or causing information to be provided pursuant to sub-section (1).

## CHAPTER VI

### CONTRIBUTIONS

Form of contribution.

31. (1) A contribution of a partner may consist of tangible or intangible property or other benefit to the limited liability partnership, including money, promissory notes, other agreements to contribute cash or property, and contracts for services performed or to be performed.

(2) the monetary value of contribution of each partner shall be accounted for and disclosed in the accounts of the limited liability partnership in the manner as may be prescribed.

32. (1) The obligation of a partner to contribute money or other property or other benefit or to perform services for a limited liability partnership shall be as per the limited liability partnership agreement.

Liability for contribution.

(2) A creditor of a limited liability partnership, which extends credit or otherwise acts in reliance on an obligation described in that agreement without notice of any compromise between partners, may enforce the original obligation against such partner.

## CHAPTER VII

### FINANCIAL DISCLOSURES

33. (1) The limited liability partnership shall maintain such proper books of accounts as may be prescribed relating to its affairs for each year of its existence on cash basis or accrual basis and according to double entry system of accounting and shall maintain the same at its registered office for such period as may be prescribed.

Maintenance of books of accounts, other records and audit, etc.

(2) Every limited liability partnership shall, within a period of six months from the end of each financial year, prepare a Statement of Account and Solvency for the said financial year as at the last day of the said financial year and the designated partners of the limited liability partnership shall put their signature on such statement evidencing their acceptance thereof.

(3) Every limited liability partnership shall file the Statement of Account and Solvency prepared pursuant to sub-section (2) with the Registrar every year in such form and manner and accompanied by such fee as may be prescribed.

(4) The accounts of limited liability partnerships shall be audited in accordance with the rules as may be prescribed:

Provided that the Central Government may, by notification, exempt any class or classes of limited liability partnerships from the requirements of this sub-section.

(5) Any limited liability partnership which fails to comply with the provisions of this section shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees and the designated partners of such limited liability partnership shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees.

Annual return.

34. (1) Every limited liability partnership shall be required to file an annual return with the Registrar within sixty days of closure of its financial year in such form and manner and accompanied by such fee as may be prescribed.

(2) Any limited liability partnership which fails to comply with the provisions of this section shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

(3) If the limited liability partnership contravenes the provision of this section, the designated partner of such limited liability partnership shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees.

Inspection of documents kept by Registrar.

35. The Statement of Accounts and Solvency and Annual Return filed by each limited liability partnership shall be available for inspection in the office of the Registrar during business hours in such manner and on payment of such fees as may be prescribed.

Penalty for false statement.

36. If in any return, statement or other document required by or for the purposes of any of the provisions of this Act, any person makes a statement—

(a) which is false in any material particular, knowing it to be false; or

(b) which omits any material fact knowing it to be material;

he shall, save as otherwise expressly provided in this Act, be punishable with imprisonment for a term which may extend to two years, and shall also be liable to fine which may extend to five lakh rupees but which shall not be less than one lakh rupees.

37. (1) In order to obtain such information as the Registrar may consider necessary for the purposes of carrying out the provisions of this Act, the Registrar may—

Power of Registrar to obtain information.

(a) require any present or former partner or designated partner or an employee of a limited liability partnership to answer any question in writing which the Registrar may consider necessary to ask for the purposes specified in this sub-section; or

(b) summon that person to appear before him or an inspector or any other public officer whom the Registrar may designate to answer any such question.

(2) The Registrar may further require the person referred to in sub-section (1) to make such further declaration or supply such further particulars as the Registrar may consider necessary.

(3) Any person who, without lawful excuse, fails to comply with any summons or requisition of the Registrar under this section shall be punishable with fine which shall not be less than two thousand rupees but which may extend to twenty-five thousand rupees.

38. The Central Government may compound any offence under this Act which is punishable with fine only, by collecting from a person reasonably suspected of having committed the offence a sum which may extend to the amount of the maximum fine prescribed for the offence.

Compounding of offences.

Destruction  
of old  
records.

39. The Registrar may destroy any document filed or registered with him in physical form or in electronic form in accordance with such rules as may be prescribed.

Enforcement  
of duty to  
make  
returns.

40. (1) If any limited liability partnership is in default in complying with—

(a) any provision of this Act or of any other law which requires the filing in any manner with the Registrar of any return, account or other document or the giving of notice to him of any matter; or

(b) any request of the Registrar to amend or complete and resubmit any document or to submit a fresh document; and

(c) fails to make good the default within fourteen days after the service on the person of a notice requiring it to be done,

the Tribunal may, on application by the Registrar, make an order directing that person or if that person is a corporation any officer of the body corporate to make good the default within such time as is specified in the order.

(2) Any such order may provide that all the costs of and incidental to the application shall be borne by that person or by any officer of the body corporate who is responsible for the default if that person is a body corporate.

(3) Nothing in this section shall limit the operation of any other provision of this Act or any other law imposing penalties in respect of any default referred to in this section on that person or an officer of a body corporate if that person is a body corporate.

## CHAPTER VIII

### ASSIGNMENT AND TRANSFER OF PARTNERSHIP RIGHTS

Partner's  
transferable  
interest.

41. (1) The rights of a partner to a share of the profits and losses of the limited liability

partnership and to receive distributions in accordance with the limited liability partnership agreement are transferable either wholly or in part.

(2) The transfer of any right by any partner pursuant to sub-section (1) does not by itself cause the disassociation of the partner or a dissolution and winding up of the limited liability partnership.

(3) The transfer of right pursuant to this section does not, by itself, entitle the transferee or assignee to participate in the management or conduct of the activities of the limited liability partnership, or access information concerning the transactions of the limited liability partnership.

## CHAPTER IX

### INVESTIGATION

42. (1) The Central Government shall appoint one or more competent persons as inspectors to investigate the affairs of a limited liability partnership and to report thereon in such manner as it may direct if—

Investigation of the affairs of a limited liability partnership.

(a) the Tribunal, either *suo motu*, or on an application received from not less than one-fifth of the total number of partners of limited liability partnership, by order, declares that the affairs of the limited liability partnership ought to be investigated; or

(b) any Court, by order, declares that the affairs of a limited liability partnership ought to be investigated.

(2) The Central Government may appoint one or more competent persons as inspectors to investigate the affairs of a limited liability partnership and to report on them in such manner as it may direct.

(3) The appointment of inspectors pursuant to sub-section (2) may be made,—

(a) if not less than one-fifth of the total number of partners of the limited liability partnership make an application along with supporting evidence and security amount as may be prescribed; or

(b) if the limited liability partnership makes an application that the affairs of the limited liability partnership ought to be investigated; or

(c) if, in the opinion of the Central Government, there are circumstances suggesting—

(i) that the business of the limited liability partnership is being conducted with an intent to defraud its creditors, partners or any other person, or otherwise for a fraudulent or unlawful purpose, or, in a manner oppressive or unfairly prejudicial to some or any of its partners, or that the limited liability partnership was formed for any fraudulent or unlawful purpose; or

(ii) that any of the partners of the limited liability partnership has been guilty of fraud, misfeasance or other misconduct towards the limited liability partnership or towards its other partners; or

(iii) that any of the partners of the limited liability partnership has not been given all the information with respect to its affairs which they might reasonably expect, including information relating to the remuneration payable to a designated partner of the limited liability partnership; or

(iv) that, on receipt of a report of the Registrar, there are sufficient reasons that the affairs of the limited liability partnership ought to be investigated.

43. An application by partners of the limited liability partnership under clause (a) of sub-section (1) of section 42 shall be supported by such evidence as the Tribunal may require for the purpose of showing that the applicants have good reason for requiring the investigation and the Central Government may, before appointing an inspector, require the applicants to give security, of such amount as may be prescribed for payment of the costs of the investigation.

Application by partners for investigation to be supported by evidence and power to call for security.

44. No firm, body corporate or other association shall be appointed as an inspector.

Firm, body corporate or association not to be appointed as inspector.

45. (1) If an inspector appointed by the Central Government to investigate the affairs of a limited liability partnership thinks it necessary for the purposes of his investigation to investigate also the affairs of an entity which has been associated in the past or is presently associated with the limited liability partnership or any present or former partner or designated partner of the limited liability partnership, the inspector shall have the power to do so and shall report on the affairs of the other entity or partner or designated partners, so far as he thinks that the results of his investigation thereof are relevant to the investigation of the affairs of the limited liability partnership.

Power of inspectors to carry out investigation into affairs of related entities, etc.

(2) In the case of any entity or partner or designated partner referred to in sub-section (1), the inspector shall not exercise his power of investigating into, and reporting on, its or his affairs without first having obtained the prior approval of the Central Government thereto:

Provided that before according approval under this sub-section, the Central Government shall give the entity or partner or designated partner a reasonable opportunity to show cause why such approval should not be accorded.

Production  
of  
documents  
and  
evidence.

46. (1) It shall be the duty of the designated partner and partners of the limited liability partnership—

(a) to preserve and to produce before an inspector or any person authorised by him in this behalf with the previous approval of the Central Government, all books and papers of, or relating to, the limited liability partnership or, as the case may be, the other entity, which are in their custody or power; and

(b) otherwise to give to the inspector all assistance in connection with the investigation which they are reasonably able to give.

(2) The inspector may, with the previous approval of the Central Government, require any entity other than an entity referred to in sub-section (1) to furnish such information to, or produce such books and papers before him or any person authorised by him in this behalf with the previous approval of that Government as he may consider necessary if the furnishing of such information or the production of such books and papers is relevant or necessary for the purposes of his investigation.

(3) The inspector may keep in his custody any books and papers produced under sub-section (1) or sub-section (2) for thirty days and thereafter shall return the same to the limited liability partnership, other entity or individual by whom or on whose behalf the books and papers are produced:

Provided that the inspector may call for the books and papers if they are needed again:

Provided further that if certified copies of the books and papers produced under sub-section (2) are furnished to the inspector, he shall return those books and papers to the entity or person concerned.

(4) An inspector may examine on oath —

(a) any of the persons referred to in sub-section (1); and

(b) with the previous approval of the Central Government, any other person in relation to the affairs of the limited liability partnership or any other entity as the case may be; and

(c) may administer an oath accordingly and for that purpose may require any of those persons to appear before him personally.

(5) If any person fails without reasonable cause or refuses —

(a) to produce before an inspector or any person authorised by him in this behalf with the previous approval of the Central Government any book or paper which it is his duty under sub-section (1) or sub-section (2) to produce; or

(b) to furnish any information which it is his duty under sub-section (2) to furnish; or

(c) to appear before the inspector personally when required to do so under sub-section (4) or to answer any question which is put to him by the inspector in pursuance of that sub-section; or

(d) to sign the notes of any examination,

he shall be punishable with fine which shall not be less than two thousand rupees but which may extend to twenty-five thousand rupees and with a further fine which shall not be less than fifty rupees but which may extend to five hundred rupees for every day after the first day after which the default continues.

(6) The notes of any examination under sub-section (4) shall be taken down in writing and signed by the person whose examination was made on oath and a copy of such notes shall be given to the person so examined on oath and thereafter be used as an evidence by the inspector.

Seizure of documents by inspector.

47. (1) Where in the course of investigation, the inspector has reasonable ground to believe that the books and papers of, or relating to, the limited liability partnership or other entity or partner or designated partner of such limited liability partnership may be destroyed, mutilated, altered, falsified or secreted, the inspector may make an application to the Judicial Magistrate of the first class or, as the case may be, the Metropolitan Magistrate, having jurisdiction, for an order for the seizure of such books and papers.

(2) After considering the application and hearing the inspector, if necessary, the Magistrate may, by order, authorise the inspector —

(a) to enter, with such assistance, as may be required, the place or places where such books and papers are kept;

(b) to search that place or those places in the manner specified in the order; and

(c) to seize books and papers which the inspector considers it necessary for the purposes of his investigation.

(3) The inspector shall keep in his custody the books and papers seized under this section for such period not later than the conclusion of the investigation as he considers necessary and thereafter shall return the same to the concerned entity or person from whose custody or power they were seized and inform the Magistrate of such return:

Provided that the books or papers shall not be kept seized for a continuous period of more than six months:

Provided further that the inspector may, before returning such books and papers as aforesaid, place identification marks on them or any part thereof.

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(4) Save as otherwise provided in this section, every search or seizure made under this section shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973 relating to searches or seizures made under that Code.

48. (1) The inspectors may, and if so directed by the Central Government, shall make interim reports to that Government, and on the conclusion of the investigation, shall make a final report to the Central Government and any such report shall be written or printed, as the Central Government may direct.

Inspector's report.

(2) The Central Government —

(a) shall forward a copy of any report (other than an interim report) made by the inspectors to the limited liability partnership at its registered office, and also to any other entity or person dealt with or related to the report; and

(b) may, if it thinks fit, furnish a copy thereof, on request and on payment of the prescribed fee to any person or entity related to or affected by the report.

49. If, from the report under section 48, it appears to the Central Government that any person in relation to the limited liability partnership or in relation to any other entity whose affairs have been investigated, has been guilty of any offence for which he is liable, the Central Government may prosecute such person for the offence; and it shall be the duty of all partners, designated partners and other

Prosecution.

employees and agents of the limited liability partnership or other entity, as the case may be to give the Central Government all assistance in connection with the prosecution which they are reasonably able to give.

Application for winding up of limited liability partnership.

50. If any such limited liability partnership is liable to be wound up under this Act or any other law for the time being in force, and it appears to the Central Government from any such report under section 48 that it is expedient to do so by reason of any such circumstances as are referred to in sub-clause (i) or (ii) of clause (c) of sub-section (3) of section 42, the Central Government may, unless the limited liability partnership is already being wound up by the Tribunal, cause to be presented to the Tribunal by any person authorised by the Central Government in this behalf, a petition for the winding up of the limited liability partnership on the ground that it is just and equitable that it should be wound up.

Proceedings for recovery of damages or property.

51. If from any report under section 48, it appears to the Central Government that proceeding ought, in the public interest, to be brought by the limited liability partnership or any entity whose affairs have been investigated,—

(a) for the recovery of damages in respect of any fraud, misfeasance or other misconduct in connection with the promotion or formation, or the management of the affairs, of such limited liability partnership or such other entity; or

(b) for the recovery of any property of such limited liability partnership or such other entity, which has been misapplied or wrongfully retained,

the Central Government may itself bring proceedings for that purpose.

52. (1) The expenses of and incidental to an investigation by an inspector appointed by the Central Government under this Act shall be defrayed in the first instance by the Central Government; but the following persons shall, to the extent mentioned below, be liable to reimburse the Central Government in respect of such expenses, namely:—

Expenses of investigation.

(a) any person who is convicted on a prosecution, or who is ordered to pay damages or restore any property in proceedings brought by virtue of section 51, may, in the same proceedings, be ordered to pay the said expenses to such extent as may be specified by the Tribunal convicting such person, or ordering him to pay such damages or restore such property, as the case may be;

(b) any entity in whose name proceedings are brought as aforesaid shall be liable, to the extent of the amount or value of any sums or property recovered by it as a result of the proceedings; and

(c) unless, as a result of the investigation, a prosecution is instituted in pursuance of section 49,

(i) any entity, a partner or designated partner or any other person dealt with by the report of the inspector shall be liable to reimburse the Central Government in respect of the whole of the expenses, unless and except in so far as, the Central Government otherwise directs; and

(ii) the applicants for the investigations, where the inspector was appointed in pursuance of the provisions of clause (a) of sub-section (1) of section 42, shall be liable to such extent, if any, as the Central Government may direct.

(2) Any amount for which a limited liability partnership or other entity is liable by virtue of clause (b) of sub-section (1) shall be a first charge on the sums or property mentioned in that clause.

(3) The amount of expenses in respect of which any limited liability partnership, other entity, a partner or designated partner or any other person is liable under sub-clause (i) of clause (c) of sub-section (1) to reimburse the Central Government shall be recoverable as an arrear of land revenue.

(4) For the purposes of this section, any costs or expenses incurred by the Central Government or in connection with proceedings brought by virtue of section 51 shall be treated as expenses of the investigation giving rise to the proceedings.

Inspector's report to be evidence.

53. A copy of any report of any inspector or inspectors appointed under this Act, authenticated in such manner, if any, as may be prescribed, shall be admissible in any legal proceeding as evidence of the opinion of the inspector or inspectors in relation to any matter contained in the report.

## CHAPTER X

### CONVERSION TO LIMITED LIABILITY PARTNERSHIP

Conversion from firm to limited liability partnership.

54. The provisions of the Second Schedule shall apply to the conversion from firm to a limited liability partnership.

Conversion from private company to limited liability partnership.

55. The provisions of the Third Schedule shall apply to the conversion from private company to a limited liability partnership.

Conversion from unlisted public company to limited liability partnership.

56. The provisions of the Fourth Schedule shall apply to the conversion from unlisted public company to a limited liability partnership.

## CHAPTER XI

### FOREIGN LIMITED LIABILITY PARTNERSHIP

57. The Central Government shall make rules for provisions in relation to establishment of place of business by foreign limited liability partnership within India and carrying on their business therein by—

Foreign limited liability partnership.

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(a) applying or incorporating, with such modifications, as appear appropriate, the provisions of the Companies Act, 1956; and

(b) in all other respect the provisions of this Act shall apply.

## CHAPTER XII

### COMPROMISE, ARRANGEMENT OR RECONSTRUCTION OF LIMITED LIABILITY PARTNERSHIPS

58. The Central Government shall make rules for provisions in relation to compromise, arrangement or reconstruction of limited liability partnerships.

Compromise, arrangement or reconstruction of limited liability partnership.

## CHAPTER XIII

### WINDING UP AND DISSOLUTION

59. The winding up of a limited liability partnership may be either voluntary or by the Tribunal.

Winding up.

60. A limited liability partnership may be wound up by the Tribunal,—

Circumstances in which limited liability partnership may be wound up by Tribunal.

(a) if the limited liability partnership decides that limited liability partnership be wound up by the Tribunal;

(b) if the number of partners of the limited liability partnership is reduced below two;

(c) if the limited liability partnership is unable to pay its debts;

(d) if the limited liability partnership has acted against the interests of the sovereignty and integrity of India, the security of the State or public sector;

(e) if the limited liability partnership has made a default in filing with the Registrar; the Statement of Account and Solvency or annual return for any five consecutive financial years;

(f) if the Tribunal is of the opinion that it is just and equitable that the limited liability partnership be wound up.

Rules for winding up.

61. The Central Government shall make rules of provisions in relation to winding up and dissolution of limited liability partnerships.

#### CHAPTER XIV

##### MISCELLANEOUS

Business transactions of partner with limited liability partnership.

62. A partner may lend money to and transact other business with the limited liability partnership and has the same rights and obligations with respect to the loan or other transactions as a person who is not a partner.

Application of company law.

63. (1) The Central Government may, by notification in the Official Gazette, direct that any of the provisions of the Companies Act, 1956 specified in the notification—

(a) shall apply to any limited liability partnership; or

(b) shall apply to any limited liability partnership with such exception, modification and adaptation as may be specified in the notification.

(2) A copy of every notification proposed to be issued under sub-section (1) shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before

the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses.

64. (1) Any document required to be filed, recorded or registered under this Act may be filed, recorded or registered in such manner and subject to such conditions as may be prescribed.

Electronic filing of documents.

(2) A copy of or an extract from any document electronically filed with or submitted to the Registrar which is supplied or issued by the Registrar and certified through digital signature to be a true copy of or extract from such document shall, in any proceedings, be admissible in evidence as of equal validity with the original document.

(3) Any information supplied by the Registrar that is certified by the Registrar through digital signature to be a true extract from any document filed or filed with or submitted to the Registrar shall, in any proceedings, be admissible in evidence and be presumed, unless evidence to the contrary is adduced, to be a true extract from such document.

65. Subject to the provisions of this Act, if any document or return required to be filed or registered under this Act with the Registrar, is not filed or registered in time and is allowed to be filed or registered after that time, then, without prejudice to any other action or liability under this Act, such document or return may be filed or registered with the Registrar on payment of a default fee of five hundred rupees for every day of such delay in addition to any

Payment of default fee.

fee as is payable for filing of such document or return, as the case may be.

Application of other laws not barred.

66. The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.

Jurisdiction of Tribunal and Appellate Tribunal.

67. (1) The Tribunal shall discharge such powers and functions as are, or may be, conferred on it by or under this Act or any other law for the time being in force.

(2) Any person aggrieved by an order or decision of Tribunal may prefer an appeal to the Appellate Tribunal and the provisions of sections 10FQ, 10FZA, 10G, 10GD, 10GF and 10GE of the Companies Act, 1956 shall be applicable in respect of such appeal.

General penalties.

68. Any person guilty of an offence under this Act for which no punishment is expressly provided shall be liable to a fine which may extend to five lakh rupees and with a further fine which may extend to fifty rupees for every day after the first day after which the default continues.

Power of Registrar to strike defunct limited liability partnership off register.

69. Where the Registrar has reasonable cause to believe that a limited liability partnership is not carrying on business or its operation, in accordance with the provisions of this Act, the name of limited liability partnership may be struck off the register of limited liability partnerships in such manner and following such procedure as may be prescribed.

Offences by limited liability partnerships.

70. Where an offence under this Act committed by a limited liability partnership is proved—

(a) to have been committed with the consent or connivance of a partner or partners or designated partner or designated partners of the limited liability partnership; or

(b) to be attributable to any neglect on the part of the partner or partners or designated partner of that limited liability partnership,

the partner or partners or designated partner or designated partners of the limited liability partnership, as the case may be, as well as that limited liability partnership shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

71. Notwithstanding any provision to the contrary in any Act for the time being in force, the Judicial Magistrate of the first class or, as the case may be, the Metropolitan Magistrate shall have jurisdiction to try any offence under this Act and shall have power to impose punishment in respect of the offence.

Jurisdiction  
of the  
Court.

72. (1) The Central Government may, by notification, in the Official Gazette, make rules for carrying out the provisions of that Act.

Power to  
make rules.

(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matter, namely:—

(a) the particulars of every individual agreeing to act as designated partner of limited liability partnership under sub-section (3) of section 7;

(b) the conditions and requirements under sub-section (4) of section 7;

(c) the manner of filing the incorporation document and payment of fees payable thereof under clause (b) of sub-section (1) of section 11;

(d) the form of statement to be filed under clause (a) of sub-section (1) of section 11;

(e) the form of incorporation document under clause (a) of sub-section (2) of section 11;

(f) the information to be contained in the incorporation document concerning the proposed limited liability partnership under clause (g) of sub-section (2) of section 11;

(g) the mode of serving the documents on a limited liability partnership under sub-section (2) of section 13;

(h) the form and manner of notice to Registrar under sub-section (3) of section 13;

(i) the manner of application and amount of fee payable to the Registrar under sub-section (1) of section 16;

(j) the manner in which names will be reserved by Registrar under sub-section (2) of section 16;

(k) the manner in which an application may be made under sub-section (1) of section 18;

(l) the form and manner of notice of change of name of limited liability partnership and the amount of fees payable under section 19;

(m) the form and manner of the limited liability partnership agreement and the changes made therein and the amount of fees payable under sub-section (2) of section 23;

(n) the form of notice, the amount of fees payable and the manner of authentication of the statement under clauses (a), (b) and (c) of sub-section (2) of section 25;

(o) the manner of accounting and disclosure of monetary value of contribution of a partner under sub-section (2) of section 31;

(p) the books of account and the period of their maintenance under sub-section (1) of section 33;

(q) the form and manner of filing of statement of account and Solvency under sub-section (3) of section 33;

(r) the accounts of a limited liability partnership shall be audited under sub-section (4) of section 33;

(s) the form and manner of filing of annual return under sub-section (1) of section 34;

(t) the manner and amount of fees payable for inspection of statement of Accounts and Solvency and Annual Return under section 35;

(u) destruction of documents by Registrar under section 39;

(v) the amount required as security under clause (a) of sub-section (3) of section 42;

(w) the amount of security to be given under section 43;

(x) the fees payable for furnishing a copy under clause (b) of sub-section (2) of section 48;

(y) the manner of authentication of report of inspector under section 53;

(z) the provisions in relation to foreign limited liability partnerships under section 57;

(za) the provisions in relation to compromise, arrangement or reconstruction under section 58;

(zb) the provisions in relation to winding up and dissolution and limited liability partnerships under section 61;

(zc) the manner and conditions for filing a document electronically under section 64;

(zd) the manner and procedure for striking off the names of limited liability partnerships from the register under section 69;

(ze) the statement and form containing particulars under paragraph 3(a) of the Second Schedule;

(zf) the form, manner and amount of fee payable on the statement under subparagraph (a) of paragraph 4 of the Third Schedule;

(zg) the form of certificate of registration under paragraph 5 of the Third Schedule;

(zh) the form, manner and amount of fee payable on the statement under subparagraph (a) paragraph 5 of the Fourth Schedule.

(3) Every rule or order made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be expiry of the session immediately following the session or the successive sessions aforesaid, both House agree in making any modification in the rule, or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or by of no effect, as the case may be; so, however that any such modification shall be without prejudice to the validity of anything previously done under that rule.

Power to  
remove  
difficulties.

73. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act as

may appear to it to be necessary for removing the difficulty:

Provided that no such order shall be made under this section after the expiry of a period of two years from the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

#### THE FIRST SCHEDULE

[See Section 23(4)]

##### DEFAULT PROVISIONS FOR LIMITED LIABILITY PARTNERSHIPS

1. The mutual rights and duties of the partners and the mutual rights and duties of the limited liability partnership and its partners shall be determined, subject to the terms of any limited liability partnership agreement or in the absence of any such agreement, by the provisions in this Schedule.

2. All the partners of a limited liability partnership are entitled to share equally in the capital profits and losses of the limited liability partnership.

3. The limited liability partnership shall indemnify each partner in respect of payments made and personal liabilities incurred by him—

(a) in the ordinary and proper conduct of the business of the limited liability partnership; or

(b) in or about anything necessarily done for the preservation of the business or property of the limited liability partnership.

4. Every partner may take part in the management of the limited liability partnership.

5. No partner shall be entitled to remuneration for acting in the business or management of the limited liability partnership.

6. No person may be introduced as a partner without the consent of all the existing partners.

7. Any matter or issue relating to the limited liability partnership shall be decided by resolution passed by a majority in number of the partners, and for this purpose, each partner shall have one vote. However, no change may be made in the nature of business of the limited liability partnership without the consent of all the partners.

8. Each partner shall render true accounts and full information of all things affecting the limited liability partnership to any partner or his legal representatives.

9. If a partner, without the consent of the limited liability partnership, carries on any business of the same nature as and competing with the limited liability partnership, he must account for and pay over to the limited liability partnership all profits made by him in that business.

10. Every partner shall account to the limited liability partnership for any benefit derived by him without the consent of the limited liability partnership from any transaction concerning the limited liability partnership, or from any use by him of the property, name or any business connection of the limited liability partnership.

11. No majority of the partners can expel any partner unless a power to do so has been conferred by express agreement between the partners.

## THE SECOND SCHEDULE

[See Section 54]

### CONVERSION FROM FIRM TO LIMITED LIABILITY PARTNERSHIP

1. (1) A firm may convert to a limited liability partnership by complying with the requirements as to the conversions set out in this Schedule. Conversion of firms to limited liability partnership.

(2) Upon such conversion, the partners of the firm shall be bound by the provisions of this Schedule that are applicable to them.

(3) The Central Government may, by order published in the Official Gazette, amend, add to or vary the provisions of this Schedule.

*Explanation*—In this paragraph, “convert”, in relation to a firm converting to a limited liability partnership, means a transfer of the property, assets, interests, rights, privileges, liabilities, obligations and the undertaking of the firm to the limited liability partnership in accordance with the provisions of this Schedule.

2. A firm may apply to convert to a limited liability partnership in accordance with this Schedule if and only if the partners of the limited liability partnership to which the firm is to be converted, comprise all the partners of the firm and no one else. Eligibility for conversion.

3. A firm may apply to convert to a limited liability partnership by filing with the Registrar— Statements to be filed.

(a) a statement by all of its partners in such medium and form and accompanied by such fees as the Central Government may prescribe, containing the following particulars, namely:—

(i) the name and registration number (if applicable) of the firm; and

(ii) the date on which the firm was registered under the Indian Partnership Act, 1932 (9 of 1932) or any written law (if applicable); and

(b) incorporation document and statement referred to in section 11.

Registration of conversion.

4. On receiving the documents referred to in paragraph 3, the Registrar shall subject to the provisions of this Act, register the documents and issue a certificate a registration in such form as the Registrar may determine stating that the limited liability partnership is, on and from the date specified in the certificate, registered under this Act.

Registrar may refuse to register.

5. (1) Nothing in this Schedule shall be construed as to require the Registrar to register any limited liability partnership if he is not satisfied with the particulars or other information furnished under the provisions of this Act.

(2) The Registrar may, in any particular case, require the documents referred to in paragraph 3 to be verified in such manner as he considers fit.

Effect of registration.

6. On and from the date of registration specified in the certificate of registration issued under paragraph 4,—

(a) there shall be a limited liability partnership by the name specified in the certificate of registration registered under this Act;

(b) all movable and immovable property vested in the firm, all assets, interests, rights, privileges, liabilities, obligations relating to the firm and the whole of the undertaking of the firm shall be transferred to and shall vest in the limited liability partnership without further assurance, act or deed; and

(c) the firm shall be deemed to be dissolved and if earlier registered under the Indian Partnership Act, 1932 (9 of 1932) removed from the records maintained under that Act.

7. If any property to which sub-paragraph (b) of paragraph 6 applies is registered with any authority, the limited liability partnership shall, as soon as practicable after the date of registration, take all necessary steps as required by the relevant authority to notify the authority of the conversion and of the particulars of the limited liability partnership in such medium and form as the authority may specify.

Registration in relation to property.

8. All proceedings by or against the firm which are pending in any court or tribunal or before any authority on the date of registration may be continued, completed and enforced by or against the limited liability partnership.

Pending proceedings.

9. Any conviction, ruling, order or judgment of any court, tribunal or other authority in favour of or against the firm may be enforced by or against the limited liability partnership.

Continuance of conviction, ruling, order or judgment.

10. Every agreement to which the firm was a party immediately before the date of registration, whether or not of such nature that the rights and liabilities thereunder could be assigned, shall have effect as from that day as if—

Existing agreements.

(a) the limited liability partnership were a party to such an agreement instead of the firm; and

(b) for any reference to the firm, there were substituted in respect of anything to be done on or after the date of registration a reference to the limited liability partnership.

11. All deeds, contracts, schemes, bonds, agreements, applications, instruments and arrangements subsisting immediately before the

Existing contracts, etc.

date of registration relating to the firm or to which the firm is a party, shall continue in force on and after that date as if they relate to the limited liability partnership and shall be enforceable by or against the limited liability partnership as if the limited liability partnership were named therein or were a party thereto instead of the firm.

Continuance of employment. 12. Every contract of employment to which paragraph 10 or paragraph 11 applies shall continue to be in force on or after the date of registration as if the limited liability partnership were the employer thereunder instead of the firm.

Existing appointment authority or power. 13. (1) Every appointment of the firm in any role or capacity which in force immediately before the date of registration shall take effect and operate from that date as if the limited liability partnership were appointed.

(2) Any authority or power conferred on the firm which is in force immediately before the date of registration shall take effect and operate from that date as if it were conferred on the limited liability partnership.

Application of paragraphs 6 to 13. 14. The provisions of paragraphs 6 to 13 (both inclusive) shall not apply to any approval, permit or licence issued under any written law to the firm which is in force immediately before the date of registration of the limited liability partnership.

Partner liable for liabilities and obligations of firm before conversion. 15. (1) Notwithstanding anything in paragraphs 6 to 13 (both inclusive), every partner of a firm that has converted to a limited liability partnership shall continue to be personally liable (jointly and severally with the limited liability partnership) for the liabilities and obligations of the firm which were incurred prior to the conversion or which arose from any contract entered into prior to the conversion.

(2) If any such partner discharges any liability or obligation referred to in sub-paragraph (1), he shall be entitled (subject to any agreement with the limited liability partnership to the contrary) to be fully indemnified by the limited liability partnership in respect of such liability or obligation.

16. (1) The limited liability partnership shall ensure that for a period of twelve months commencing not later than fourteen days after the date of registration, every official correspondence of the limited liability partnership bears the following:

Notice of conversion in correspondence.

(a) a statement that it was as from the date of registration, converted from a firm to a limited liability partnership; and

(b) the name and registration number (if applicable) of the firm from which it was converted.

(2) Any limited liability partnership which contravenes the provisions of sub-paragraph (1) shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees and with a further fine which shall not be less than fifty rupees but which may extend to five hundred rupees for every day after the first day after which the default continues.

### THE THIRD SCHEDULE

[See Section 55]

#### CONVERSION FROM PRIVATE COMPANY TO LIMITED LIABILITY PARTNERSHIP

1. In this Schedule, unless the context otherwise requires,—

Interpretation.

(a) “company” means a private company as defined in clause (iii) of sub-section (1) of section 3 of the Companies Act, 1956 (1 of 1956);

(b) “convert”, in relation to a private company converting to a limited liability partnership, means a transfer of the property, assets, interests, rights, privileges, liabilities, obligations and the undertaking of the private company to the limited liability partnership in accordance with this Schedule.

Amendment of Schedule.

2. The Central Government may, by order published in the Gazette, amend, add to or vary the provisions of this Schedule.

Eligibility for conversion of private companies to limited liability partnership.

3. (1) A company may convert to a limited liability partnership by complying with the requirements as to the conversion set out in this Schedule.

(2) A company may apply to convert to a limited liability partnership in accordance with this Schedule if and only if—

(a) there is no security interest in its assets subsisting or in force at the time of application; and

(b) the partners of the limited liability partnership to which it converts comprise all the shareholders of the company and no one else.

(3) Upon such conversion, the company, its shareholders, the limited liability partnership to which the company has converted and the partners of that limited liability partnership shall be bound by the provisions of this Schedule that are applicable to them.

Statements to be filed.

4. A company may apply to convert to a limited liability partnership by filing with the Registrar—

(a) a statement by all its shareholders in such form and manner to be accompanied by such fees as the Central Government may prescribe, containing the following particulars, namely:—

(i) the name and registration number of the company; and

(ii) the date on which the company was incorporated under the Companies Act, 1956 (1 of 1956); and

(b) incorporation document and statement referred to in section 11.

5. On receiving the documents referred to in paragraph 3, the Registrar shall, subject to the provisions of this Act and the rules made thereunder register the documents and issue a certificate of registration in such form as the Central Government may prescribe stating that the limited liability partnership is, on and from the date specified in the certificate, registered under this Act.

Registration of conversion.

6. (1) Nothing in this Schedule shall be construed as to require the Registrar to register any limited liability partnership if he is not satisfied with the particulars or other information furnished under the provisions of this Act.

Registrar may refuse to Register.

(2) The Registrar may, in any particular case, require the documents referred to in paragraph 3 to be verified in such manner as he considers fit.

7. On and from the date of registration specified in the notice of registration issued under paragraph 4—

Effect of registration.

(a) there shall be a limited liability partnership by the name specified in the certificate of registration registered under this Act;

(b) all movable and immovable property vested in the company, all assets, interests, rights, privileges, liabilities, obligations relating to the company and the whole of the undertaking of the company shall be transferred to and shall vest in the

limited liability partnership without further assurance, act or deed; and

(c) the company shall be deemed to be dissolved and removed from the records of the Registrar of Companies.

Registration in relation to property.

8. If any property to which clause (b) of paragraph 7 applies is registered with any authority, the limited liability partnership shall as soon as practicable after the date of registration, take all necessary steps are required by the relevant authority to notify the authority of the conversion and of the particulars of the limited liability partnership in such medium and form as the authority may determine.

Pending proceedings.

9. All proceedings by or against the company which are pending before any court, tribunal or other authority on the date of registration may be continued, completed and enforced by or against the limited liability partnership.

Continuance of conviction, ruling, order or judgement.

10. Any conviction, ruling, order or judgment of any court, tribunal or other authority in favour of or against the company may be enforced by or against the limited liability partnership.

Existing agreements.

11. Every agreement to which the company was a party immediately before the date of registration, whether or not such nature that the rights and liabilities thereunder could be assigned, shall have effect as from that day as if—

(a) the limited liability partnership were a party to such an agreement instead of the company; and

(b) for any reference to the company, there were substituted in respect of anything to be done on or after the date of registration a reference to the limited liability partnership.

12. All deeds, contracts, schemes, bonds, agreements, applications, instruments and arrangements subsisting immediately before the date of registration relating to the company or to which the company is a party shall continue in force on and after that date as if they relate to the limited liability partnership and shall be enforceable by or against the limited liability partnership as if the limited liability partnership were named therein or were a party thereto instead of the company.

Existing contracts, etc.

13. Every contract of employment to which paragraph 11 paragraph 12 applies shall continue in force on or after the date of registration as if the limited liability partnership were the employer thereunder instead of the company.

Continuance of employment.

14. (1) Every appointment of the company in any role or capacity which is in force immediately before the date of registration shall take effect and operate from that date as if the limited liability partnership were appointed.

Existing appointment, authority or power.

(2) Any authority or power conferred on the company which is in force immediately before the date of registration shall take effect and operate from that date as if it were conferred on the limited liability partnership.

15. The provisions of paragraphs 7 to 14 (both inclusive) shall not apply to any approval, permit or licence issued under any written law to the company which is in force immediately before the date of registration of the limited liability partnership.

Application of paragraphs 7 to 14.

16. (1) The limited liability partnership shall ensure that for a period of twelve months commencing not later than fourteen days after the date of registration, every official correspondence of the limited liability partnership bears the following, namely:—

Notice of conversion in correspondence.

(a) a statement that it was, as from the date of registration, converted from a company to a limited liability partnership; and

(b) the name and registration number of the company from which it was converted.

(2) Any limited liability partnership which contravenes the provision of sub-paragraph (1) shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees and with a further fine which shall not be less than fifty rupees but which may extend to five hundred rupees for every day after the first day after which the default continues.

#### THE FOURTH SCHEDULE

[See Section 56]

##### CONVERSION FROM UNLISTED PUBLIC COMPANY TO LIMITED LIABILITY PARTNERSHIP

Interpretation. 1. (1) In this Schedule, unless the context otherwise requires,—

(a) “company” means an unlisted public company;

(b) “convert”, in relation to a company converting to a limited liability partnership, means a transfer of the property, assets, interests, rights, privileges, liabilities, obligations and the undertaking of the company to the limited liability partnership in accordance with the provision of this Schedule;

(c) “listed company” means a listed company as defined in the SEBI (Disclosure and Investor Protection) Guidelines, 2000 issued by the Securities and Exchange Board of India under section 11 of the Securities of the Securities and Exchange Board of India Act, 1992 (15 of 1992).

(d) “unlisted public company”, means a company which is not a listed company.

2. The Central Government may, by order published in the Official Gazette, amend, add to or vary the provisions of this Schedule.

Amendment of Schedule.

3. (1) A company may convert to a limited liability partnership by complying with the requirements as to the conversion set out in this Schedule.

Conversion of company to a limited liability partnership.

(2) Upon such conversion, the company, its shareholders, the limited liability partnership to which the company has converted and the partners of the limited liability partnership shall be bound by the provisions of this Schedule that are applicable to them.

4. A company may apply to convert to a limited liability partnership in accordance with this Schedule if and only if—

Eligibility for conversion.

(a) there is no security interest in its assets subsisting or in force at the time of application; and

(b) the partners of the limited liability partnership to which it converts comprise all the shareholders of the company and no one else.

5. A company may apply to convert to a limited liability partnership by filing with the Registrar—

Statements to be filed.

(a) a statement by all its shareholders in such form and manner to be accompanied by such fees as the Central Government may prescribe containing the following particulars, namely:—

(i) the name and registration number of the company; and

(ii) the date on which the company was incorporated under the Companies Act, 1956 (1 of 1956); and

(b) incorporation document and statement referred to in section 11.

Registration of conversion.

6. On receiving the documents referred to in paragraph 5, the Registrar shall subject to the provisions of this Act, and the rules made thereunder, register the documents and issue a certificate of registration in such form as the Registrar may determine stating that the limited liability partnership is, on and from the date specified in the certificate, registered under this Act.

Registrar may refuse to Register.

7. (1) Nothing in this Schedule shall be construed as to require the Registrar to register any limited liability partnership if he is not satisfied with the particulars or other information furnished under the provisions of this Act.

(2) The Registrar may, in any particular case, require the documents referred to in paragraph 3 to be verified in such manner as he considers fit.

Effect of registration.

8. On and from the date of registration specified in the notice of registration issued under paragraph 4—

(a) there shall be a limited liability partnership by the name specified in the certificate of registration registered under this Act;

(b) all movable and immovable property vested in the company all assets interests, rights, privileges, liabilities, obligations relating to the company and the whole of the undertaking of the company shall be transferred to and shall vest in the limited liability partnership without further assurance, act or deed; and

(c) the company shall be deemed to be dissolved and removed from the records of the Registrar of Companies.

Registration in relation to property.

9. If any property to which clause (b) of paragraph 8 applies is registered with any authority, the limited liability partnership shall

as soon as practicable after the date of registration, take all necessary steps as required by the relevant authority to notify the authority of the conversion and of the particulars of the limited liability partnership in such medium and form as the authority may determine.

10. All proceedings by or against the company which are pending in any court or tribunal or before an authority on the date of registration may be continued, completed and enforced by or against the limited liability partnership.

Pending proceedings.

11. Any conviction, ruling, order or judgment of any court, tribunal or other authority in favour of or against the company may be enforced by or against the limited liability partnership.

Continuance of conviction ruling, order or judgement.

12. Every agreement to which the company was a party immediately before the date of registration, whether or not of such nature that the rights and liabilities thereunder could be assigned, shall have effect as from that day as if—

Existing agreements.

(a) the limited liability partnership were a party to such an agreement instead of the company; and

(b) for any reference to the company, there were substituted in respect of anything to be done on or after the date of registration a reference to the limited liability partnership.

13. All deeds, contracts, schemes, bonds, agreements, applications, instruments and arrangements subsisting immediately before the date of registration relating to the company or to which the company is a party shall continue in force on and after that date as if they relate to the limited liability partnership and shall be enforceable by or against the limited liability partnership as if the limited liability partnership

Existing contracts etc.

were named therein or were a party thereto instead of the company.

Continuance of employment.

14. Every contract of employment to which paragraph 12 or paragraph 13 applies shall continue in force on or after the date of registration as if the limited liability partnership were the employer thereunder instead of the company.

Existing appointment authority of power.

15. (1) Every appointment of the company in any role or capacity which is in force immediately before the date of registration shall take effect and operate from that date as if the limited liability partnership were appointed.

(2) Any authority or power conferred on the company which is in force immediately before the date of registration shall take effect and operate from that date as if it were conferred on the limited liability partnership were appointed.

Application of paragraphs 8 to 15.

16. The provisions of paragraphs 8 to 15 (both inclusive) shall not apply to any approval, permit or licence issued under any written law to the company which is in force immediately before the date of registration of the limited liability partnership.

Notice of conversion of correspondence.

17. (1) The limited liability partnership shall ensure that for a period of twelve months commencing not later than fourteen days after the date of registration, every official correspondence of the limited liability partnership bears the following:

(a) a statement that it was, as from the date of registration, converted from a company to a limited liability partnership; and

(b) the name and registration number of the company from which it was converted.

(2) Any limited liability partnership which contravenes the provisions of sub-paragraph (1) shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees and with a further fine which shall not be less than fifty rupees but which may extend to five hundred rupees for every day after the first day after which the default continues.

## STATEMENT OF OBJECTS AND REASONS

With the growth of the Indian economy, the role played by its entrepreneurs as well as its technical and professional manpower has been acknowledged internationally. It is felt opportune that entrepreneurship, knowledge and risk capital combine to provide a further impetus to India's economic growth. In this background, a need has been felt for a new corporate form that would provide an alternative to the traditional partnership, with unlimited personal liability on the one hand, and, the statute-based governance structure of the limited liability company on the other, in order to enable professional expertise and entrepreneurial initiative to combine, organize and operate in flexible, innovative and efficient manner.

2. The Limited Liability Partnership (LLP) is viewed as an alternative corporate business vehicle that provides the benefits of limited liability but allows its members the flexibility of organizing their internal structure as a partnership based on a mutually arrived agreement. The LLP form would enable entrepreneurs, professionals and enterprises providing services of any kind or engaged in scientific and technical disciplines, to form commercially efficient vehicles suited to their requirements. Owing to flexibility in its structure and operation, the LLP would also be a suitable vehicle for small enterprises and for investment by venture capital.

3. The salient features of the Limited Liability Partnership Bill, 2006, *inter alia*, are as follows:—

- (i) The LLP shall be a body corporate and a legal entity separate from its partners. Any two or more persons, associated for carrying on a lawful business with a view to profit, may by subscribing their names to an incorporation document and filing the same with the Registrar, form a Limited Liability Partnership. The LLP will have perpetual succession;
- (ii) The mutual rights and duties of partners of an LLP *inter se* and those of the LLP and its partners shall be governed by an agreement between partners or between the LLP and the partners subject to the provision of the proposed legislation. The Bill, if enacted, would provide flexibility to devise the agreement as per their choice. In the absence of any such agreement, the mutual rights and duties shall be governed by the provisions of proposed legislation;

- (iii) The LLP will be a separate legal entity, liable to the full extent of its assets, with the liability of the partners being limited to their agreed contribution in the LLP which may be of tangible or intangible nature or both tangible and intangible in nature. No partner would be liable on account of the independent or un-authorized actions of other partners or their misconduct;
- (iv) Every LLP shall have at least two partners and shall also have at least two individuals as Designated Partners, of whom at least one shall be resident in India. The duties and obligations of Designated Partners shall be as provided in the law;
- (v) The LLP shall be under an obligation to maintain annual accounts reflecting true and fair view of its state of affairs. A statement of accounts and solvency shall be filed by every LLP with the Registrar every year. The accounts of LLPs shall also be audited, subject to any class of LLPs being exempted from this requirement by the Central Government.
- (vi) The Central Government shall have powers to investigate the affairs of an LLP, if required, by appointment of competent inspector for the purpose;
- (vii) The proposed legislation would confer powers on the Central Government to apply such provisions of the Companies Act, 1956 to provide, *inter alia*, for mergers, amalgamations, winding up and dissolutions of LLPs, as appropriate, by notification with such changes or modifications as deemed necessary. However, such notifications shall be laid in draft before each House of Parliament for a total period of 30 days and shall be subject to any modification as may be approved by both Houses;
- (viii) The Indian Partnership Act, 1932 shall not be applicable to LLPs. Other entities may convert themselves to LLP in accordance with provisions of the proposed legislation;
- (ix) The Central Government shall have powers to make rules for carrying out the provisions of the proposed legislation.

4. The Bill seeks to achieve the above objectives.

## NOTES ON CLAUSES

*Clause 2.*—This clause defines various expressions used in the Bill for the purposes of certainty in the interpretation of the proposed legislation e.g., “foreign limited liability partnership” as limited liability partnership which is formed, registered or incorporated outside India and establishes a place of business in India, ‘limited liability partnership’ as a partnership formed and registered under the proposed legislation; ‘limited liability partnership agreement’ as a 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 such partnership; and ‘partner’ in relation to limited liability partnership, as any person who has been admitted as a partner in the limited liability partnership in accordance with the limited liability partnership agreement.

*Clause 3.*—This clause seeks to provide that Limited Liability Partnership (LLP) is to be a body corporate having perpetual succession and a legal entity separate from its partners and any change in the partners of such partnership shall not affect its liabilities.

*Clause 4.*—This clause seeks to provide that the provisions of the Indian Partnership Act, 1932 (9 of 1932) shall not apply to an LLP.

*Clause 5.*—This clause seeks to provide that an individual or a body corporate may become a partner in an LLP and also requirements of obtaining a Partner Identification Number from the Central Government by every Designated Partner.

*Clause 6.*—This clause seeks to provide that an LLP shall consist of at least two partners and also provides that in a situation where the number of partners is reduced to one and such LLP carries on business with such sole partner for more than six months and then such partner, if having knowledge of such a situation, shall be liable personally for the obligations of the LLP.

*Clause 7.*—This clause seeks to provide that an LLP shall have at least two Designated Partners who shall be individuals and at least one of them shall be resident in India. Particulars of every designated partner who agrees to act as such shall be filed with Registrar. It also seeks to empower Central Government to make rules for prescribing

conditions and requirements for an individual to be a Designated Partner.

*Clause 8.*—This clause seeks to provide for the manner in which an individual can become a Designated Partner and also provides for the procedure and time period for filling up of a vacancy of a Designated Partner. If no Designated Partner is appointed, or if at any time there is only one Designated Partner, each partner of the LLP shall be deemed to be a Designated Partner.

*Clause 9.*—This clause seeks to provide for the obligation of an LLP to appoint an individual (resident of India) as a Designated Partner, within thirty days, and liabilities and duties of the Designated Partner who shall be—

(a) answerable for the doing of all acts, matters and things as are required to be done by the LLP in respect of compliance of the provisions of this Bill including filing of any document, return, statement and the like report pursuant to the provisions of this Bill and as may be specified in the LLP Agreement; and

(b) liable to all penalties imposed on the LLP for any contravention of those provisions.

*Clause 10.*—This clause seeks to provide that if the LLP fails to appoint Designated Partners under sub-clause (1) of clause 7 of the Bill, then the LLP and its every partner shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to five lakh rupees. The clause also seeks to provide that if an LLP does not meet other requirements provided in clauses 7, 8 and 9 in relation to Designated Partners, the LLP and its every partner shall be punishable with fine which shall not be less than ten thousand rupees and may extend to one lakh rupees.

*Clause 11.*—This clause seeks to provide for manner of filing of incorporation document and other statement of LLP with Registrar and also the contents and form of the incorporation document. It also seeks to provide for penalties for making statement by any person, knowing it to be false, or not believing it to be true, which shall not be less than ten thousand rupees and may extend to five lakh rupees and also for imprisonment for a term which may extend to two years.

*Clause 12.*—This clause seeks to provide for registration of incorporation document of LLP and issue of a certificate of its incorporation by the Registrar.

*Clause 13.*—This clause seeks to provide that every LLP shall have a registered office to which all communications will be made and received. It also seeks to provide for mode of serving the documents to LLP and intimating the change of the address of the registered office in the prescribed manner to the Registrar. This clause further seeks to provide for penalties of not less than two thousand rupees which may extend to twenty five thousand rupees in case the LLP contravenes the provisions of this clause.

*Clause 14.*—This clause seeks to provide that LLP shall be a body corporate and can use and be sued, acquire, own, hold and develop or dispose of property and have a common seal.

*Clause 15.*—This clause seeks to provide an obligation on every LLP to suffix “limited liability partnership” or “LLP” with its name. The clause also seeks to provide that no LLP shall be registered with an undesirable name or a name which is identical or nearly resembles to that of any other partnership firm or an LLP or a body corporate or a registered trade mark or a trade mark the application of which is pending.

*Clause 16.*—This clause seeks to provide for making of an application for reservation of proposed name of the LLP or change of its existing name to the Registrar who may reserve the name for a period of three months. It also seeks to empower the Central Government to make rules regarding form, manner and fees payable on such application. The clause further seeks to empower the Central Government to frame rules which may be followed by Registrars while reserving names of LLPs.

*Clause 17.*—This clause seeks to empower the Central Government to give direction to the LLP to rectify its name if the name registered is undesirable or so nearly resembles the name of any other LLP or body corporate or other name as to be likely to be mistaken for it. It seeks to provide for imposition of a fine of not less than ten thousand rupees but which may extend to five lakh rupees in case the LLP fails to comply with such direction.

*Clause 18.*—This clause seeks to provide for an application to be made by an LLP to the Registrar in case another LLP has been incorporated with the same name subsequently, for giving a direction to the LLP (subsequently registered) to change its name. A period of twenty-four months has been provided within which the former LLP will have to make an application to the Registrar.

*Clause 19.*—This clause seeks to provide that an LLP may change its name by filing with the Registrar a notice of such change in such form, and manner and on payment of fee as may be prescribed by the rules.

*Clause 20.*—This clause seeks to provide for imposition of a fine which may extend to five lakh rupees in case any person carries on business using the words “Limited Liability Partnership” or “LLP” without getting incorporated as LLP.

*Clause 21.*—This clause seeks to provide that every LLP shall ensure that its invoices and official correspondence bear the name, address and registration number of the LLP and the statement that it is registered with limited liability. It also seeks to provide for imposition of a fine of not less than two thousand rupees but which may extend to twenty five thousand rupees in case the LLP contravenes these provisions.

*Clause 22.*—This clause seeks to provide that the persons who subscribe their names to the incorporation document shall be partners of LLP and any other person may also become partner of the LLP in accordance with its agreement.

*Clause 23.*—This clause seeks to provide that the mutual rights and duties of the partners of the LLP *inter-se* and that of the LLP and its partners shall be governed by the LLP Agreement and in absence of any such Agreement, such mutual rights and duties shall be determined as set out in the First Schedule of the Bill. It also seeks to empower the Central Government to prescribe, by rules, the form, manner and fees for filing the LLP Agreement and informing changes therein. This clause further seeks to provide that any agreement, made before the incorporation of LLP, between the partners who subscribe their names to the incorporation document may impose obligation on LLP, if ratified by all the partners after its incorporation.

*Clause 24.*—This clause seeks to provide for the circumstances under which a person may cease to be a partner of an LLP and for his obligation to the LLP or to the other partners or to other persons incurred during the period when he was partner of the LLP. It also seeks to provide that a former partner or a person entitled to his share in case of death or insolvency of former partner shall not have any right to interfere in the management of the LLP.

*Clause 25.*—This clause seeks to provide for the requirement and the procedure for filing notice about changes in the name and addresses

of partners of the LLP to the Registrar. It also seeks to provide for imposition of a fine of not less than two thousand rupees but which may extend to twenty five thousand rupees in case the LLP fails to intimate such changes to the Registrar.

*Clause 26.*—This clause seeks to provide that every partner of the LLP is agent of the LLP but not of other partners.

*Clause 27.*—This clause seeks to provide that the LLP shall not be bound by anything done by a partner in dealing with a person if that partner has no authority to act for LLP in doing a particular act and the person with whom he is dealing also knows that the partner has no authority for such act and to provide that an obligation of LLP, whether arising out of contract or otherwise will solely be the obligation of LLP. It also seeks to provide that liabilities of LLP are to be met from the property of LLP. It further seeks to provide that LLP shall be liable for a wrongful act or omission by a partner in the course of the business of the LLP or with its authority. It further seeks to provide that the obligation of an LLP shall not affect the personal liability of a partner for his own wrongful act or omission but a partner shall not be personally liable for wrongful act or omission of any other partner.

*Clause 28.*—This clause seeks to provide that the partner is not personally liable directly or indirectly for an obligation of LLP solely by reason of his being a partner of the LLP.

*Clause 29.*—This clause seeks to provide for unlimited liability of the LLP and its partners in case LLP or any of its partners carry out an act with intent to defraud creditors of the LLP or any other person or if they carry out an act for any fraudulent purpose. The clause further seeks to provide that in case any such act is carried out by a partner, the LLP is liable to the same extent as the partner unless it is established by the LLP that such act was without the knowledge or the authority of the LLP. This clause further seeks to provide that any person who knowingly carries such act shall be punishable with imprisonment for a term which may extend to two years and with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees.

*Clause 30.*—This clause seeks to provide that the Court or Tribunal may reduce or waive any penalty leviable against any partner or employee of an LLP in case such partner or employee has provided useful information during investigation of such LLP for finding out the offence. The clause further seeks to provide that no such partner

or employee shall be discharged, demoted, suspended, threatened, harassed or in any other manner discriminated merely because of his providing information to the Court or Tribunal.

*Clause 31.*—This clause seeks to provide various kinds in which contributions may be made by partners of an LLP and the manner in which such contributions shall be valued and disclosed in the accounts of the LLP.

*Clause 32.*—This clause seeks to provide that obligation of a partner to make contribution shall be as per the LLP Agreement. The clause further seeks to provide that a creditor of an LLP may enforce the original obligation against any partner of the LLP without notice of any subsequent compromise between partners.

*Clause 33.*—This clause seeks to provide for requirement relating to maintenance of proper books of accounts by the LLP relating to its affairs for each year and for filing of an annual Statement of Accounts and Solvency with the Registrar in such form and manner as may be prescribed. This clause seeks to empower the Central Government to prescribe rules for the manner in which the accounts of LLPs shall be audited. It also seeks to empower the Central Government to grant exemption to any class or classes of LLPs from this requirement. It also seeks to provide for imposition of a fine of not less than one lakh rupees but which may extend to five lakh rupees for LLP and of a fine of not less than ten thousand rupees but which may extend to one lakh rupees for Designated Partner of LLP, in case the LLP fails to comply with these provisions.

*Clause 34.*—This clause seeks to provide that every LLP shall be required to file with the Registrar an Annual Return every year. It also seeks to empower the Central Government to specify, by rules, the contents of such Annual Return. The clause also seeks to provide that any LLP which fails to comply with these provisions shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees and the Designated Partner of such LLP shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees.

*Clause 35.*—This clause seeks to provide that the Statement of Accounts and Solvency and Annual Return filed by each LLP with the Registrar shall be available for inspection in the office of the Registrar by the public. It also seeks to empower the Central Government to prescribe by rules, the manner and amount of fees for such inspection.

*Clause 36.*—This clause seeks to provide that if any person makes any statement in any return, statement or other document under this Bill which is false in any material particular, or which omits any material fact, knowingly, he shall be punishable with imprisonment for a term which may extend to two years and shall also be liable to fine which may extend to five lakh rupees but which shall not be less than one lakh rupees.

*Clause 37.*—This clause seeks to empower the Registrar to call for information from any present or former partner or Designated Partner or employee of the LLP or to summon them before him for the purpose of carrying out the provisions of this Bill. The clause seeks to provide that any person who, without lawful excuse, fails to comply with any summons or requisition of the Registrar under this clause shall be punishable with fine which shall not be less than two thousand rupees but which may extend to twenty-five thousand rupees.

*Clause 38.*—This clause seeks to provide for empowering the Central Government to compound any offence under this Bill which is punishable with fine by collecting a sum not exceeding the amount of maximum fine prescribed for such offence.

*Clause 39.*—This clause seeks to empower the Central Government to prescribe by rules the manner in which the Registrar may destroy any document filed or registered with him by the LLPs.

*Clause 40.*—This clause seeks to provide that in case any LLP is in default in complying with the provisions relating to filing with the Registrar of any return, account or other document or giving of any notice to him, the Registrar may make an application before the Tribunal for making an order for directions in order to make good the default within a time frame.

*Clause 41.*—This clause seeks to provide that the rights of a partner to a share of the profits and losses of the LLP and to receive distributions shall be transferable in accordance with the LLP Agreement and such transfer shall not by itself cause the disassociation of the partner or a dissolution and winding up of the LLP. The clause further seeks to provide that such transfer would not entitle the transferee to participate in the management of the LLP.

*Clause 42.*—This clause seeks to provide the circumstances under which investigation of the affairs of the LLP may be ordered and the inspectors appointed by the Central Government to carry out such investigation.

*Clause 43.*—This clause seeks to provide that an application by partners of the LLP for investigation of the LLP shall be supported by such evidence as the Tribunal may require and that the Central Government may require the applicants to give security of such amount as may be prescribed for payment of the costs of the investigation.

*Clause 44.*—This clause seeks to prohibit a firm, body corporate or other association to be appointed as an inspector.

*Clause 45.*—This clause seeks to provide that the inspector appointed by the Central Government to investigate the affairs of the LLP under this Bill may carry out investigation into the affairs of other entities associated with the LLP in the past or present or of partner or designated partner, after seeking prior approval of the Central Government.

*Clause 46.*—This clause seeks to provide the duty of the Designated Partner and partners of the LLP to preserve and produce all books, papers relating to the LLP before inspector and otherwise give all assistance to the inspector for investigation. This clause also seeks to empower the inspector to examine such persons on oath. This clause further seeks to provide that if any person fails without reasonable cause or refuses to produce before an inspector any book or paper or furnish any relevant information or to appear before the inspector personally when required to do or to answer any question which is put to him by the inspector under this clause or to sign the notes of any examination, he shall be punishable with fine which shall not be less than two thousand rupees but which may extend to twenty five thousand rupees and with a further fine which shall not be less than fifty rupees but which may extend to five hundred rupees for every day after the first day after which the default continues.

*Clause 47.*—This clause seeks to empower the inspector appointed by the Central Government under this Bill to investigate the affairs of an LLP, to enter the place where books and papers kept, search and seize the documents or books or papers relating to LLP, after seeking permission from the judicial Magistrate First Class or Metropolitan Magistrate in this regard, if he has reasonable cause that the partner of such LLP or other entity may destroy, mutilate, alter, falsify or secret the documents. The clause also seeks to empower inspector to keep such books and papers in his custody for a period not exceeding six months for investigation and return the same, after needful is done, to the concerned entity or person and inform the Magistrate of such return.

*Clause 48.*—This clause seeks to provide that an inspector investigating an LLP may, and if so directed by the Central Government, shall make interim reports to that Government in relation to an investigation carried out by him. It further seeks to provide that on conclusion of the investigation, a final report shall be made to Central Government by the inspector. This clause further seeks to provide that the Central Government shall forward a copy of the report other than interim report to the concerned LLP or related entity or persons. A copy of such report may also be furnished to any person or entity related to or affected by the report on the request and on payment of prescribed fee.

*Clause 49.*—This clause seeks to provide that if, from the inspectors report, it appears to the Central Government that any person in relation to LLP or any other entity being investigated has been guilty of any offence for which he is liable, the Central Government may prosecute such person for the offence. The clause further seeks to provide that it shall be the duty of all partners, Designated Partners and other employees and agents of the LLP to give the Central Government all assistance in connection with such prosecution.

*Clause 50.*—This clause seeks to provide that if any such LLP is liable to be wound up under this Bill or any other law and it appears to the Central Government from report made by an Inspector under clause 48 that it is expedient to do so by reason that the business of the LLP is being conducted with an intent to defraud its creditors, partners or any other person, or otherwise for a fraudulent or unlawful purpose, or in a manner oppressive or unfairly prejudicial to some or any of its partners, or that the LLP was formed for any fraudulent or unlawful purpose; or that any of the partners of the LLP has been guilty of fraud, misfeasance or other misconduct towards the LLP or towards its other partners, the Central Government may, cause to be presented to the Tribunal by any person authorized by it, a petition for the winding up of the LLP on the just and equitable grounds.

*Clause 51.*—This clause seeks to provide that if from any report of inspector, it appears to the Central Government that proceedings ought, in the public interest, to be brought by the LLP or any entity whose affairs have been investigated for the recovery of damages in respect of any fraud, misfeasance or other misconduct in connection with the promotion or formation, or the management of the affairs, of such LLP or such other entity or for the recovery of any property of such LLP or such other entity, which has been misapplied or wrongfully retained, the Central Government may itself bring proceedings for that purpose.

*Clause 52.*—This clause seeks to provide about the manner in which the expenses of an investigation by an inspector appointed by the Central Government under this Bill shall be defrayed and reimbursed. The Clause also seeks to provide that any amount for which an LLP or other entity is liable, shall be a first charge on the sums or property recovered by such LLP or other entity during investigation. The clause further seeks to provide that the amount of expenses in respect of which any LLP, other entity, a partner or Designated Partner or any other person is liable to reimburse the Central Government shall be recoverable as an arrear of land revenue. The clause further seeks to provide that any costs or expenses incurred by the Central Government or in connection with proceedings for recovery of damages or property brought by virtue of this Bill shall be treated as expenses of the investigation.

*Clause 53.*—This clause seeks to provide that a copy of any report of any inspector appointed under this Bill, authenticated in a manner as may be prescribed by rules, shall be admissible in any legal proceeding as evidence of the opinion of the inspector or inspectors in relation to any matter contained in the report.

*Clause 54.*—This clause seeks to provide that provisions contained in the Second Schedule shall apply at the time of conversion of a firm to an LLP.

*Clause 55.*—This clause seeks to provide that provisions contained in Third Schedule shall apply at the time of conversion of a private limited company to an LLP.

*Clause 56.*—This clause seeks to provide that provisions contained in the Fourth Schedule shall apply at the time of conversion of an unlisted public company to an LLP.

*Clause 57.*—This clause seeks to empower the Central Government to make rules for provisions in relation to establishment of place of business by foreign LLP within India and carrying on their business therein by applying or incorporating, with such modifications, as appear appropriate, the provisions of the Companies Act, 1956. The clauses further seeks to state that in all other respect the provisions of this Bill shall apply.

*Clause 58.*—This clause seeks to empower the Central Government to make rules with regard to compromise, arrangement or reconstruction of the LLPs.

*Clause 59.*—This clause seeks to provide that the winding up of an LLP may be either voluntary or by the Tribunal.

*Clause 60.*—This clause seeks to specify the circumstances in which an LLP may be wound up by the Tribunal.

*Clause 61.*—This clause seeks to empower the Central Government to make rules for provisions in relation to winding up and dissolution of LLPs.

*Clause 62.*—This clause seeks to provide that a partner may lend money to and transact other business with the LLP and that he shall have the same rights and obligations with respect to the loan or other transactions as a person who is not a partner.

*Clause 63.*—This clause seeks to empower the Central Government, to direct, by notification in the Official Gazette, that any of the provisions of the Companies Act, 1956 shall apply to any LLP or shall apply to any LLP with such exception, modification and adaptation as may be specified in the notification. The clause further seeks to provide that such notification shall be laid in draft before each House of Parliament for a total period of thirty days and shall be subject to modification as may be approved by both the Houses.

*Clause 64.*—This clause seeks to provide that any document required to be filed, recorded or registered under this Bill may be filed, recorded or registered in a manner and as per such conditions as may be prescribed by rules by the Central Government.

*Clause 65.*—This clause seeks to provide that, if any document or return required to be filed or registered under this Bill with the Registrar, is not filed or registered in time, then without prejudice to any other action or liability under this Bill, such document or return may be filed or registered with the Registrar on payment of a default fee of five hundred rupees for every day of such delay.

*Clause 66.*—This clause seeks to provide that other laws are also applicable to the LLP in addition to the provisions of this Bill and their application is not barred.

*Clause 67.*—This clause seeks to provide that the Tribunal shall discharge such powers and functions as are, or may be, conferred on it by or under this Bill or any other law for the time being in force. The clause also seeks to allow filing of appeal to the Appellate Tribunal by any person who is aggrieved by an order or decision of Tribunal.

*Clause 68.*—This clause seeks to provide that any person guilty of an offence under this Bill for which no punishment is expressly provided shall be liable to a fine which may extend to five lakh rupees and with a further fine which may extend to fifty rupees for every day after the first day after which the default continues.

*Clause 69.*—This clause seeks to provide that where the Registrar has reasonable cause to believe that an LLP is not carrying on business or its operation, the name of LLP may be struck off from the register of LLPs. The clause seeks to empower the Central Government to prescribe, by rules, the manner and procedure which shall be followed for such striking off of name of any LLP by the Registrar.

*Clause 70.*—This clause seeks to provide that where an offence under this Bill committed by an LLP is proved to have been committed with the consent or connivance of a partner(s) or Designated Partner(s) of the LLP or is attributable to any neglect on the part of the partner(s) or Designated Partner(s) of that LLP, the partner(s) or Designated Partner(s) of the LLP as well as that LLP shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

*Clause 71.*—This clause seeks to provide that notwithstanding any provision to the contrary in any Act, the Judicial Magistrate of the first class or the Metropolitan Magistrate shall have jurisdiction to try any offence under this Bill and shall have power to impose punishment in respect of the offence.

*Clause 72.*—This clause seeks to confer upon the Central Government the power to make rules for carrying out the provisions of this Bill. The clause seeks to enumerate the various matters in respect of which such rules may be made. The clause further seeks to provide that every rule or orders made under this Bill are required to be laid before both the Houses of Parliament.

*Clause 73.*—This clause seeks to confer power upon the Central Government to make provision, by order published in the Official Gazette, to remove difficulties which may arise in giving effect to the provisions of this Bill and such order to be issued only within a period of two years from the date of the commencement of this Bill. The clause seeks to provide that the orders made under this clause shall be required to be laid before both the Houses of Parliament.

## MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clause (c) of clause 2 of the Bill confers power upon the Central Government to specify, by notification in the Official Gazette, any other body corporate (not being a company as defined in section 3 of the Companies Act, 1956 or an LLP as defined in the proposed legislation) not to be included in the definition of 'body corporate'.

2. Clause 63 of the Bill confers power upon the Central Government to give directions, by notification in the Official Gazette, that any of the provisions of the Companies Act, 1956 shall apply to any LLP or shall apply to any LLP with such exception, modification and adaptation as may be specified in the notification.

3. Clause 72 of the Bill confers power upon the Central Government to make rules for carrying out the purposes of the Bill. The matters in respect of which rules may be made relate, *inter-alia*, to provide for form and manner of filing of the particulars of every individual agreeing to act as Designated Partner of LLP under sub-clause (3) of clause 7; conditions and requirements for appointment of an individual as Designated Partner under sub-clause (4) of clause 7; manner of filing the incorporation document and payment of fees payable thereof with the Registrar under of sub-clause (1) (b) of clause 11; form of statement to be filed under sub-clause (1) (c) of clause 11; form of Incorporation Document under sub-clause (2) (a) of clause 11; other information to be contained in the Incorporation Document under sub-clause (2) (g) of clause 11; mode of serving the documents on a LLP under sub-clause (2) of clause 13; the form and manner of notice to the Registrar under sub-clause (3) of clause 13; the manner of application and amount of fee payable to the Registrar under sub-clause (1) of clause 16; the manner in which names will be reserved by Registrar under sub-clause (2) of Clause 16 prescribes; manner in which an application may be made for change of name under sub-clause (1) of clause 18; form and manner of notice of change of name of LLP and the amount of fees payable under clause 19; contents of LLP Agreement and the form manner and payment of fees thereof at the time of filling of such Agreement under sub-clause (2) of clause 23; form of notice, the amount of fees payable and the manner of authentication of the statement under sub-clauses (2) (a), (b) and (c) of clause 25; manner of accounting and disclosure of monetary value of contribution of a partner under sub-clause (2) of clause 31; books of account and the period of their maintenance under sub-clause (1) of

clause 33; form and manner of filing of statement of Account and Solvency under sub-clause (3) of clause 33; the manner in which the accounts of a LLP shall be audited under sub-clause (4), of clause 33; form and manner of filing of annual return under sub-clause (1) of clause 34; manner and amount of fees payable for inspection of Statement of Accounts and Solvency and Annual Return under clause 35; destruction of documents by Registrar under clause 39; regarding the amount required as security under sub-clause (3) (a) of clause 42; the amount of security to be given under clause 43; fees payable for furnishing a copy under sub-clause (2) (b) of clause 48; manner of authentication of report of inspector under clause 53; provisions in relation to establishment of place of business by foreign LLP within India under clause 57; compromise, arrangement or reconstruction of LLPs under clause 58; winding up and dissolution of LLPs under clause 61; manner and conditions for filing a document electronically under clause 64; manner and procedure for striking off the names of LLPs from the register of LLP by the Registrar under clause 69; form, manner and amount of fee payable on the statement under sub-paragraph (a) of paragraph 4 of the Second Schedule; form of certificate of registration under Paragraph 5 of the Third Schedule; form, manner and amount of fee payable on the statement under sub-paragraph (a) of paragraph 5 of the Fourth Schedule; any other matter which is to be, or may be, prescribed in respect of which provision is to be, or may be, made by rules.

4. Sub-paragraph (3) of paragraph 1 of the Second Schedule of the Bill confers power upon the Central Government to amend, add to or vary the provisions of that Schedule, by order published in the Official Gazette.

5. Paragraph 2 of the Third Schedule of the Bill confers power upon the Central Government to amend, add to or vary the provisions of that Schedule, by order published in the Official Gazette.

6. Paragraph 2 of Fourth Schedule of the Bill confers power upon the Central Government to amend, add to or vary the provisions of that Schedule, by order published in the Official Gazette.

7. The notification issued under sub clause (1) of clause 63 and rules made under sub-clause (2) of clause 72; and orders issued under sub-clause (1) of clause 73; under sub-para (3) of para 1 of Second Schedule; under para 2 of Third Schedule and para 2 of Fourth Schedule shall be laid before each House of Parliament.

8. The matters in respect of which notifications or order may be issued and the rules may be made are generally matters of procedure and administrative detail and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

RAJYA SABHA

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**BILL**

*to make provisions for the formation and regulation of limited liability partnerships and for matters connected therewith or incidental thereto.*

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*(Shri Prem Chand Gupta, Minister of Company Affairs)*

FIFTY-EIGHTH REPORT  
STANDING COMMITTEE ON FINANCE  
(2007-08)

(FOURTEENTH LOK SABHA)

MINISTRY OF CORPORATE AFFAIRS

THE LIMITED LIABILITY PARTNERSHIP  
BILL, 2006

*Presented to Lok Sabha on 27.11.2007*

*Laid in Rajya Sabha on 27.11.2007*



LOK SABHA SECRETARIAT  
NEW DELHI

*November, 2007/Agrahayana, 1929 (Saka)*

COF No. 58

*Price* : Rs. 148.00

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Published under Rule 382 of the Rules of Procedure and Conduct of Business in Lok Sabha (Twelfth Edition) and printed by Jainco Art India, New Delhi.

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COMPOSITION OF STANDING COMMITTEE ON  
FINANCE (2007-2008)

Shri Ananth Kumar — *Chairman*

MEMBERS

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3. Shri Gurudas Dasgupta
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1. Dr. (Smt.) P.K. Sandhu — *Additional Secretary*
2. Shri A. Louis Martin — *Joint Secretary*
3. Shri S.B. Arora — *Director*
4. Shri T.G. Chandrasekhar — *Deputy Secretary*

## INTRODUCTION

1. The Chairman of the Standing Committee on Finance having been authorised by the Committee to present the Report on their behalf, present this Fifty-eighth Report on the Limited Liability Partnership Bill, 2006.

2. The Limited Liability Partnership Bill, 2006, introduced in Rajya Sabha on 15 December, 2006 was referred to the Committee on 27 December, 2006 for examination and report thereon, by the Hon'ble Speaker, Lok Sabha in consultation with the Chairman, Rajya Sabha under Rule 331E of the Rules of Procedure and Conduct of Business in Lok Sabha.

3. The Committee obtained background note and written information on various provisions contained in the aforesaid Bill from the Ministry of Corporate Affairs. The representatives of the Ministry of Corporate Affairs also briefed the Committee at their sitting held on 1 June, 2007.

4. Written views/memoranda were received from the Institute of Chartered Accountants of India (ICAI), the Institute of Company Secretaries of India (ICSI), the Institute of Cost & Works Accountants of India (ICWAI), the Federation of Indian Chambers of Commerce and Industry (FICCI), the Confederation of Indian Industries (CII), the PHD Chamber of Commerce and Industries (PHDCCI) and Associated Chambers of Commerce and Industries (ASSOCHAM).

5. The Committee at their sitting held on 27 June, 2007 took evidence of the representatives of ICAI, ICSI and ICWAI. At their sitting held on 18th July, 2007, the Committee heard the views of the representatives of PHDCCI, CII and ASSOCHAM.

6. The Committee took oral evidence of the representatives of the Ministry of Corporate Affairs on 30 August, 2007.

7. The Committee considered and adopted the report at their sitting held on 22nd November, 2007.

8. The Committee wish to express their thanks to the representatives of the Ministry of Corporate Affairs and the representatives of ICAI, ICSI and ICWAI for appearing before the Committee and furnishing

the material and information which were desired in connection with the examination of the Bill.

9. The Committee also wish to express their thanks to CII, PHDCCI, ASSOCHAM and FICCI for furnishing Memoranda and to the representatives of CII, PHDCCI and ASSOCHAM for appearing before the Committee and placing their views.

10. For facility of reference observations/recommendations of the Committee have been printed in thick type in the body of the Report.

NEW DELHI;  
22 November, 2007  
1 Agrahayana, 1929 (Saka)

ANANTH KUMAR,  
*Chairman,*  
*Standing Committee on Finance.*

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**STANDING COMMITTEE  
ON FINANCE  
(2007-08)**

**FOURTEENTH LOK SABHA**

**MINISTRY OF CORPORATE AFFAIRS**

**THE LIMITED LIABILITY PARTNERSHIP  
BILL, 2006**

**FIFTY-EIGHTH REPORT**



**LOK SABHA SECRETARIAT  
NEW DELHI**

*November, 2007 / Agrahayana, 1929 (Saka)*