

THE LIMITED LIABILITY PARTNERSHIP BILL, 2008

ARRANGEMENT OF CLAUSES

CHAPTER I

PRELIMINARY

CLAUSES

1. Short title, extent and commencement.
2. Definitions.

CHAPTER II

NATURE OF LIMITED LIABILITY PARTNERSHIP

3. Limited liability partnership to be body corporate.
4. Non-applicability of the Indian Partnership Act, 1932.
5. Partners.
6. Minimum number of partners.
7. Designated partners.
8. Liabilities of designated partners.
9. Changes in designated partners.
10. Punishment for contravention of sections 7, 8 and 9.

CHAPTER III

INCORPORATION OF LIMITED LIABILITY PARTNERSHIP AND MATTERS INCIDENTAL THERETO

11. Incorporation document.
12. Incorporation by registration.
13. Registered office of limited liability partnership and change therein.
14. Effect of registration.
15. Name.
16. Reservation of name.
17. Change of name of a limited liability partnership.
18. Application for direction to change name in certain circumstances.
19. Change of registered name.
20. Penalty for improper use of word "limited liability partnership" or "LLP".
21. Publication of name and limited liability.

CHAPTER IV

PARTNERS AND THEIR RELATIONS

22. Eligibility to be partners.
23. Relationship of partners.
24. Cessation of partnership interest.
25. Registration of changes in partners.

CHAPTER V

**EXTENT AND LIMITATION OF LIABILITY OF LIMITED LIABILITY
PARTNERSHIP AND PARTNERS**

CLAUSES

26. Partner as agent.
27. Extent of liability of limited liability partnership.
28. Extent of liability of partner.
29. Holding out.
30. Unlimited liability in case of fraud.
31. Whistle blowing.

CHAPTER VI

CONTRIBUTIONS

32. Form of contribution.
33. Obligation to contribute.

CHAPTER VII

FINANCIAL DISCLOSURES

34. Maintenance of books of account, other records and audit, etc.
35. Annual return.
36. Inspection of documents kept by Registrar.
37. Penalty for false statement.
38. Power of Registrar to obtain information.
39. Compounding of offences.
40. Destruction of old records.
41. Enforcement of duty to make returns, etc.

CHAPTER VIII

ASSIGNMENT AND TRANSFER OF PARTNERSHIP RIGHTS

42. Partner's transferable interest.

CHAPTER IX

INVESTIGATION

43. Investigation of the affairs of limited liability partnership.
44. Application by partners for investigation.
45. Firm, body corporate or association not to be appointed as inspector.
46. Power of inspectors to carry out investigation into affairs of related entities, etc.
47. Production of documents and evidence.
48. Seizure of documents by inspector.
49. Inspectors' report.
50. Prosecution.
51. Application for winding up of limited liability partnership.
52. Proceedings for recovery of damages or property.
53. Expenses of investigation.
54. Inspector's report to be evidence.

CHAPTER X

CONVERSION TO LIMITED LIABILITY PARTNERSHIP

CLAUSES

55. Conversion from firm to limited liability partnership.
56. Conversion from private company to limited liability partnership.
57. Conversion from unlisted public company to limited liability partnership.
58. Registration and effect of conversion.

CHAPTER XI

FOREIGN LIMITED LIABILITY PARTNERSHIPS

59. Foreign limited liability partnerships.

CHAPTER XII

COMPROMISE, ARRANGEMENT OR RECONSTRUCTION OF LIMITED LIABILITY PARTNERSHIPS

60. Compromise or arrangement of limited liability partnerships.
61. Power of Tribunal to enforce compromise or arrangement
62. Provisions for facilitating reconstruction or amalgamation of limited liability partnerships.

CHAPTER XIII

WINDING UP AND DISSOLUTION

63. Winding up and dissolution.
64. Circumstances in which limited liability partnership may be wound up by Tribunal.
65. Rules for winding up.

CHAPTER XIV

MISCELLANEOUS

66. Business transactions of partner with limited liability partnership.
67. Application of the provisions of the Companies Act, 1956.
68. Electronic filing of documents.
69. Payment of additional fee.
70. Enhanced punishment.
71. Application of other laws not barred.
72. Jurisdiction of Tribunal and Appellate Tribunal.
73. Penalty on non-compliance of any order passed by Tribunal.
74. General penalties.
75. Power of Registrar to strike defunct limited liability partnership off register.
76. Offences by limited liability partnerships.
77. Jurisdiction of Court.
78. Power to alter Schedules.
79. Power to make rules.
80. Power to remove difficulties.
81. Transitional provisions.

THE FIRST SCHEDULE.

THE SECOND SCHEDULE.

THE THIRD SCHEDULE.

THE FOURTH SCHEDULE.



Bill No. XLVI of 2008

THE LIMITED LIABILITY PARTNERSHIP BILL, 2008

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-ninth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

5 1. (1) This Act may be called the Limited Liability Partnership Act, 2008.

(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:

10 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 that provision.

Short title,
extent and
commencement.

Definitions.

2. (1) In this Act, unless the context otherwise requires,—

(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;

(b) “advocate” means an advocate as defined in clause (a) of sub-section (1) of section 2 of the Advocates Act, 1961; 5
25 of 1961.

(c) “Appellate Tribunal” means the National Company Law Appellate Tribunal constituted under sub-section (1) of section 10FR of the Companies Act, 1956; 1 of 1956.

(d) “body corporate” means a company as defined in section 3 of the Companies Act, 1956 and includes — 10
1 of 1956.

(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 for the time being in force; and 15

(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.
20

(e) “business” includes every trade, profession, service and occupation;

(f) “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; 38 of 1949.
25

(g) “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; 56 of 1980.

(h) “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; 23 of 1959.
30

(i) “Court”, with respect to any offence under this Act, means the Court having jurisdiction as per the provisions of section 77;

(j) “designated partner” means any partner designated as such pursuant to section 7; 31

(k) “entity” means any body corporate and includes, for the purposes of sections 18, 46, 47, 48, 49, 50, 52 and 53, a firm set-up under the Indian Partnership Act, 1932; 9 of 1932.

(l) “financial year”, in relation to a limited liability partnerships, means the period from the 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 day of September of a year, the financial year may end on the 31st day of March of the year next following that year; 40

(m) “foreign limited liability partnership” means a limited liability partnership formed, incorporated or registered outside India which establishes a place of business within India; 41

(n) "limited liability partnership" means a partnership formed and registered under this Act;

5 (o) "limited liability partnership agreement" means any written agreement between the partners of the limited liability partnership or between the limited liability partnership and its partners which determines the mutual rights and duties of the partners and their rights and duties in relation to that limited liability partnership;

(p) "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;

10 (q) "partner", in relation to a limited liability partnership, means any person who becomes a partner in the limited liability partnership in accordance with the limited liability partnership agreement;

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

1 of 1956. 15 (s) "Registrar" means a Registrar, or an Additional, a Joint, a Deputy or an Assistant Registrar, having the duty of registering companies under the Companies Act, 1956;

(t) "Schedule" means a Schedule to this Act;

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

1 of 1956. 20 (2) Words and expressions used and not defined in this Act but defined in the Companies Act, 1956 shall have the meanings respectively assigned to them in that Act.

CHAPTER II

NATURE OF LIMITED LIABILITY PARTNERSHIP

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

Limited liability partnership to be body corporate.

25 (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.

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

Non-applicability of the Indian Partnership Act, 1932. Partners.

30 5. Any individual or body corporate may be a partner in a limited liability partnership: Provided that an individual shall not be capable of becoming a partner of a limited liability partnership, if—

(a) he has been found to be of unsound mind by a Court of competent jurisdiction and the finding is in force;

35 (b) he is an undischarged insolvent; or

(c) he has applied to be adjudicated as an insolvent and his application is pending.

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

Minimum number of partners.

40 (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 of the limited liability partnership incurred during that period.

Designated partners.

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 bodies corporate or in which one or more partners are individuals and bodies corporate, at least two individuals who are partners of such limited liability partnership or nominees of such bodies corporate shall act as designated partners. 5

Explanation.— For the purposes of this section, the term “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.

(2) Subject to the provisions of sub-section (1),— 10

(i) if the incorporation document—

(a) specifies who are to be designated partners, such persons shall be designated partners on incorporation; or

(b) states that each of the partners from time to time of limited liability partnership is to be designated partner, every partner shall be a designated partner; 15

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

(3) An individual shall not become a designated partner in any limited liability partnership unless he has given his prior consent to act as such to the limited liability partnership in such form and manner as may be prescribed. 20

(4) Every limited liability partnership shall file with the registrar the particulars of every individual who has given his consent to act as designated partner in such form and manner as may be prescribed within thirty days of his appointment.

(5) An individual eligible to be a designated partner shall satisfy such conditions and requirements as may be prescribed. 25

(6) Every designated partner of a limited liability partnership shall obtain a Designated Partner Identification Number (DPIN) 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. 30

Liabilities of designated partners.

8. Unless expressly provided otherwise in this Act, a designated partner shall be—

(a) responsible 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 35

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

Changes in designated partners.

9. A limited liability partnership may appoint a designated partner within thirty days of a vacancy arising for any reason and provisions of sub-section (4) and sub-section (5) of section 7 shall apply in respect of such new designated partner: 40

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.

Punishment for contravention of sections 7, 8 and 9.

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. 45

(2) If the limited liability partnership contravenes the provisions of sub-section (4) and sub-section (5) of section 7, section 8 or section 9, 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 one lakh rupees.

CHAPTER III

INCORPORATION OF LIMITED LIABILITY PARTNERSHIP AND MATTERS INCIDENTAL THERETO

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 subscribe 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 along with the incorporation document, a statement in the prescribed form, made by either an advocate, or a Company Secretary or a Chartered Accountant or a Cost Accountant, who is engaged in the formation of the limited liability partnership and by any one 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,

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.

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—

Incorporation by registration.

(a) register the incorporation document; and

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

(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 issued under clause (b) of sub-section (1) shall be signed by the Registrar and authenticated by his official seal.

(4) The certificate shall be conclusive evidence that the limited liability partnership is incorporated by the name specified therein.

Registered office of limited liability partnership and change therein.

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. 5

(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 manner, as may be prescribed, at the registered office and any other address specifically declared by the limited liability partnership for the purpose in such form and manner as may be prescribed. 10

(3) A limited liability partnership may change the place of its registered office and file the notice of such change with the Registrar in such form and manner and subject to such conditions 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. 15

Effect of registration.

14. On registration, a limited liability partnership shall, by its name, be capable of —

(a) suing and being sued;

(b) acquiring, owning, holding and developing or disposing of property, whether movable or immovable, tangible or intangible; 20

(c) having a common seal, if it decides to have one; 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. 25

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

(a) undesirable; or

(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. 30

47 of 1999.

Reservation of name.

16. (1) A person may apply in such form and manner and accompanied by such fee as may be prescribed to the Registrar for the reservation of a name set out in the application as— 35

(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. 40

Change of name of limited liability partnership.

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 — 45

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

(b) is identical with or too 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 such limited liability partnership to change its name, and the limited liability partnership shall comply with the said 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 and 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.

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

Application for direction to change name in certain circumstances.

(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.

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.

Change of registered name.

20. If any person or persons carry on business under any name or title of which the words "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 fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees.

Penalty for improper use of words "limited liability partnership" or "LLP".

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

Publication of name and limited liability.

(a) the name, address of its registered office 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, if any, made therein shall be filed with the Registrar in such form, manner and 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. 5-

Cessation of
partnership
interest.

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 in writing of not less than thirty days to the other partners of his intention to resign as partner. 10

(2) A person shall cease to be a partner of a limited liability partnership—

(a) on his death or dissolution of the limited liability partnership; or

(b) if he is declared to be of unsound mind by a competent court; or

(c) if he has applied to be adjudged as an insolvent or declared as an insolvent. 15

(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 20

(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. 25

(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 — 30

(a) an amount 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 accumulated losses of the limited liability partnership, determined as at the date the former partner ceased to be a partner. 35

(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.

Registration of
changes in
partners.

25. (1) Every partner shall inform the limited liability partnership of any change in his name or address within a period of fifteen days of such change. 40

(2) A limited liability partnership shall—

(a) where a person becomes or ceases to be a partner, file a notice 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, file a notice with the Registrar within thirty days of such change. 45

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

(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

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

(4) If the limited liability partnership contravenes the provisions of sub-section (2), 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.

(5) If any partner contravenes the provisions of sub-section (1), such partner shall be punishable with fine which shall not be less than two thousand rupees but which may extend to twenty-five thousand rupees.

15 (6) Any person who ceases to be a partner of a limited liability partnership may himself file with the Registrar the notice referred to in sub-section (3) if he has reasonable cause to believe that the limited liability partnership may not file the notice with the Registrar and in case of any such notice 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 notice:

20 Provided that where no confirmation is given by the limited liability partnership within fifteen days, the registrar shall register the notice made by a person ceasing to be a partner under this section.

CHAPTER V

25 EXTENT AND LIMITATION OF LIABILITY OF LIMITED LIABILITY PARTNERSHIP AND PARTNERS

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

Partner as agent.

30 27. (1) A limited liability partnership is not bound by anything done by a partner in dealing with a person if—

Extent of liability of limited liability partnership.

(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.

35 (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, shall be solely the obligation of the limited liability partnership.

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

45 (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.

Holding out.

29. (1) Any person, who by words spoken or written or by conduct, represents himself, or knowingly permits himself to be represented to be a partner in a limited liability partnership is liable to any person who has on the faith of any such representation given credit to the limited liability partnership, whether the person representing himself or represented to be a partner does or does not know that the representation has reached the person so giving credit: 5-

Provided that where any credit is received by the limited liability partnership as a result of such representation, the limited liability partnership shall, without prejudice to the liability of the person so representing himself or represented to be a partner, be liable to the extent of credit received by it or any financial benefit derived thereon. 10

(2) Where after a partner's death the business is continued in the same limited liability partnership name, the continued use of that name or of the deceased partner's name as a part thereof shall not of itself make his legal representative or his estate liable for any act of the limited liability partnership done after his death. 15-

Unlimited liability in case of fraud.

30. (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: 20

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 limited liability partnership that such act was without the knowledge or the authority of the limited liability partnership. 25

(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. 30

(3) Where a limited liability partnership or any partner or designated partner or employee of such limited liability partnership has conducted the affairs of the limited liability partnership in a fraudulent manner, then without prejudice to any criminal proceedings which may arise under any law for the time being in force, the limited liability partnership and any such partner or designated partner or employee shall be liable to pay compensation to any person who has suffered any loss or damage by reason of such conduct: 35-

Provided that such limited liability partnership shall not be liable if any such partner or designated partner or employee has acted fraudulently without knowledge of the limited liability partnership.

Whistle blowing.

31. (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— 40

(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. 45-

(2) No partner or 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 limited liability partnership or employment merely because of his providing information or causing information to be provided pursuant to sub-section (1). 50

CHAPTER VI

CONTRIBUTIONS

32. (1) A contribution of a partner may consist of tangible, movable or immovable 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. Form of contribution.

(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.

33. (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. Obligation to contribute.

(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

34. (1) The limited liability partnership shall maintain such proper books of account 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 account, 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 in such form as may be prescribed, and such statement shall be signed by the designated partners of the limited liability partnership.

(3) Every limited liability partnership shall file within the prescribed time, 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 fees as may be prescribed.

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

Provided that the Central Government may, by notification in the Official Gazette, 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 twenty-five thousand rupees but which may extend to five lakh rupees and every 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.

35. (1) Every limited liability partnership shall file an annual return duly authenticated 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. Annual return.

(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 twenty-five thousand 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.

Inspection of documents kept by Registrar.

36. The incorporation document, names of partners and changes, if any, made therein, Statement of Account and Solvency and annual return filed by each limited liability partnership with the Registrar shall be available for inspection by any person in such manner and on payment of such fee as may be prescribed.

Penalty for false statement.

37. 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.

Power of Registrar to obtain information.

38. (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 require any person including any present or former partner or designated partner or employee of a limited liability partnership to answer any question or make any declaration or supply any details or particulars in writing to him within a reasonable period.

(2) In case any person referred to in sub-section (1) does not answer such question or make such declaration or supply such details or particulars asked for by the Registrar within a reasonable time or time given by the Registrar or when the Registrar is not satisfied with the reply or declaration or details or particulars provided by such person, the Registrar shall have power to 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 or make such declaration or supply such details, as the case may be.

(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.

Compounding of offences.

39. 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.

Destruction of old records.

40. 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, etc.

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

(a) any provisions 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 fails to make good the default within fourteen days after the service on the limited liability partnership of a notice requiring it to be done, the Tribunal may, on application by the Registrar, make an order directing that limited liability partnership or its designated partners or its partners to make good the default within such time as 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 limited liability partnership.

(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 limited liability partnership.

CHAPTER VIII

ASSIGNMENT AND TRANSFER OF PARTNERSHIP RIGHTS

5- 42. (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.

Partner's transferable interest.

(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.

10 (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

15 43. (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 limited liability partnership.

20 (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.

25 (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

30 (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—

35 (i) that the business of the limited liability partnership is being or has been 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

40 (ii) that the affairs of the limited liability partnership are not being conducted in accordance with the provisions of this Act; or

(iii) that, on receipt of a report of the Registrar or any other investigating or regulatory agency, there are sufficient reasons that the affairs of the limited liability partnership ought to be investigated.

45 44. An application by partners of the limited liability partnership under clause (a) of sub-section (1) of section 43 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

Application by partners for 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 costs of the investigation.

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

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

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

46. (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 partner, 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. 5

(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: 10

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. 15

Production of documents and evidence.

47. (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 20

(b) otherwise to give to the inspector all assistance in connection with the investigation which they are reasonably able to give. 25

(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. 30

(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: 35

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— 40

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

(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—

5 (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

10 (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,

15 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.

20 (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.

25 48. (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.

Seizure of documents by inspector.

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

30 (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.

35 (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 and papers shall not be kept seized for a continuous period of more than six months:

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

(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.

2 of 1974.

45 49. (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. 3-

Prosecution.

50. If, from the report under section 49, 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 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. 10

Application for winding up of limited liability partnership.

51. 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 49 that it is expedient to do so by reason of any such circumstances as are referred to in sub-clause (i) or sub-clause (ii) of clause (c) of sub-section (3) of section 43, 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. 11- 20

Proceedings for recovery of damages or property.

52. If, from any report under section 49, it appears to the Central Government that proceedings 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 2-

(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. 30

Expenses of investigation.

53. (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:—

(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 52, may, in the same proceedings, be ordered to pay the said expenses to such extent as may be specified by the court convicting such person, or ordering him to pay such damages or restore such property, as the case may be; 3-

(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 40

(c) unless, as a result of the investigation, a prosecution is instituted in pursuance of section 50,—

(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 45

(ii) the applicants for the investigation, where the inspector was appointed in pursuance of the provisions of clause (a) of sub-section (1) of section 43, shall be liable to such extent, if any, as the Central Government may direct.

5- (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.

10 (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 arrears of land revenue.

(4) For the purposes of this section, any costs or expenses incurred by the Central Government or in connection with the proceedings brought by virtue of section 52 shall be treated as expenses of the investigation giving rise to the proceedings.

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

CHAPTER X

CONVERSION TO LIMITED LIABILITY PARTNERSHIP

20 55. A firm may convert into a limited liability partnership in accordance with the provisions of this Chapter and the Second Schedule. Conversion from firm into limited liability partnership.

56. A private company may convert into a limited liability partnership in accordance with the provisions of this Chapter and the Third Schedule. Conversion from private company into limited liability partnership.

57. An unlisted public company may convert into a limited liability partnership in accordance with the provisions of this Chapter and the Fourth Schedule. Conversion from unlisted public company into limited liability partnership.

25 58. (1) The Registrar, on satisfying that a firm, private company or an unlisted public company, as the case may be, has complied with the provisions of the Second Schedule, the Third Schedule or the Fourth Schedule, as the case may be, shall, subject to the provisions of this Act and the rules made thereunder, register the documents submitted under such Schedule 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: Registration and effect of conversion.

30 9 of 1932. 35 1 of 1956. Provided that the limited liability partnership shall, within fifteen days of the date of registration, inform the concerned Registrar of Firms or Registrar of Companies, as the case may be, with which it was registered under the provisions of the Indian Partnership Act, 1932 or the Companies Act, 1956, as the case may be, about the conversion and of the particulars of the limited liability partnership in such form and manner as may be prescribed.

35 (2) Upon such conversion, the partners of the firm, the shareholders of private company or unlisted public company, as the case may be, the limited liability partnership to which such firm or such company has converted, and the partners of the limited liability partnership shall be bound by the provisions of the Second Schedule, the Third Schedule or the Fourth Schedule, as the case may be, applicable to them.

(3) Upon such conversion, on and from the date of certificate of registration, the effects of the conversion shall be such as specified in the Second Schedule, the Third Schedule or the Fourth Schedule, as the case may be.

(4) Notwithstanding anything contained in any other law for the time being in force, on and from the date of registration specified in the certificate of registration issued under the Second Schedule, the Third Schedule or the Fourth Schedule, as the case may be,—

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

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

(c) the firm or the company, as the case may be, shall be deemed to be dissolved and removed from the records of the Registrar of Firms or Registrar of Companies, as the case may be.

CHAPTER XI

FOREIGN LIMITED LIABILITY PARTNERSHIPS

Foreign limited liability partnerships.

59. The Central Government may make rules for provisions in relation to establishment of place of business by foreign limited liability partnerships 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 or such regulatory mechanism with such composition as may be prescribed.

CHAPTER XII

COMPROMISE, ARRANGEMENT OR RECONSTRUCTION OF LIMITED LIABILITY PARTNERSHIPS

Compromise, or arrangement of limited liability partnerships.

60. (1) Where a compromise or arrangement is proposed—

- (a) between a limited liability partnership and its creditors; or
(b) between a limited liability partnership and its partners,

the Tribunal may, on the application of the limited liability partnership or of any creditor or partner of the limited liability partnership, or, in the case of a limited liability partnership which is being wound up, of the liquidator, order a meeting of the creditors or of the partners, as the case may be, to be called, held and conducted in such manner as may be prescribed or as the Tribunal directs.

(2) If a majority representing three-fourths in value of the creditors, or partners, as the case may be, at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the Tribunal, by order be binding on all the creditors or all the partners, as the case may be, and also on the limited liability partnership, or in the case of a limited liability partnership which is being wound up, on the liquidator and contributories of the limited liability partnership:

Provided that no order sanctioning any compromise or arrangement shall be made by the Tribunal unless the Tribunal is satisfied that the limited liability partnership or any other person by whom an application has been made under sub-section (1) has disclosed to the Tribunal, by affidavit or otherwise, all material facts relating to the limited liability partnership, including the latest financial position of the limited liability partnership and the pendency of any investigation proceedings in relation to the limited liability partnership.

(3) An order made by the Tribunal under sub-section (2) shall be filed by the limited liability partnership with the Registrar within thirty days after making such an order and shall have effect only after it is so filed.

(4) If default is made in complying with sub-section (3), the limited liability partnership, and every designated partner of the limited liability partnership shall be punishable with fine which may extend to one lakh rupees.

(5) The Tribunal may, at any time after an application has been made to it under this section, stay the commencement or continuation of any suit or proceeding against the limited liability partnership on such terms as the Tribunal thinks fit, until the application is finally disposed of.

61. (1) Where the Tribunal makes an order under section 60 sanctioning a compromise or an arrangement in respect of a limited liability partnership, it—

Power of Tribunal to enforce compromise or arrangement.

(a) shall have power to supervise the carrying out of the compromise or an arrangement; and

(b) may, at the time of making such order or at any time thereafter, give such directions in regard to any matter or make such modifications in the compromise or arrangement as it may consider necessary for the proper working of the compromise or arrangement.

(2) If the Tribunal aforesaid is satisfied that a compromise or an arrangement sanctioned under section 60 cannot be worked satisfactorily with or without modifications, it may, either on its own motion or on the application of any person interested in the affairs of the limited liability partnership, make an order for winding up the limited liability partnership, and such an order shall be deemed to be an order made under section 64 of this Act.

62. (1) Where an application is made to the Tribunal under section 60 for sanctioning of a compromise or arrangement proposed between a limited liability partnership and any such persons as are mentioned in that section, and it is shown to the Tribunal that—

Provisions for facilitating reconstruction or amalgamation of limited liability partnerships.

(a) compromise or arrangement has been proposed for the purposes of, or in connection with, a scheme for the reconstruction of any limited liability partnership or limited liability partnerships, or the amalgamation of any two or more limited liability partnerships; and

(b) under the scheme the whole or any part of the undertaking, property or liabilities of any limited liability partnership concerned in the scheme (in this section referred to as a "transferor limited liability partnership") is to be transferred to another limited liability partnership (in this section referred to as the "transferee limited liability partnership"),

the Tribunal may, either by the order sanctioning the compromise or arrangement or by a subsequent order, make provisions for all or any of the following matters, namely:—

(i) the transfer to the transferee limited liability partnership of the whole or any part of the undertaking, property or liabilities of any transferor limited liability partnership;

(ii) the continuation by or against the transferee limited liability partnership of any legal proceedings pending by or against any transferor limited liability partnership;

(iii) the dissolution, without winding up, of any transferor limited liability partnership;

(iv) the provision to be made for any person who, within such time and in such manner as the Tribunal directs, dissent from the compromise or arrangement; and

(v) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out:

Provided that no compromise or arrangement proposed for the purposes of, or in connection with, a scheme for the amalgamation of a limited liability partnership, which is being wound up, with any other limited liability partnership or limited liability

partnerships, shall be sanctioned by the Tribunal unless the Tribunal has received a report from the Registrar that the affairs of the limited liability partnership have not been conducted in a manner prejudicial to the interests of its partners or to public interest:

Provided further that no order for the dissolution of any transferor limited liability partnership under clause (iii) shall be made by the Tribunal unless the Official Liquidator has, on scrutiny of the books and papers of the limited liability partnership, made a report to the Tribunal that the affairs of the limited liability partnership have not been conducted in a manner prejudicial to the interests of its partners or to public interest. 5-

(2) Where an order under this section provides for the transfer of any property or liabilities, then, by virtue of the order, that property shall be transferred to and vest in, and those liabilities shall be transferred to and become the liabilities of, the transferee limited liability partnership; and in the case of any property, if the order so directs, freed from any charge which is, by virtue of the compromise or arrangement, to cease to have effect. 10

(3) Within thirty days after the making of an order under this section, every limited liability partnership in relation to which the order is made shall cause a certified copy thereof to be filed with the Registrar for registration. 15-

(4) If default is made in complying with the provisions of sub-section (3), the limited liability partnership, every designated partner of the limited liability partnership shall be punishable with fine which may extend to fifty thousand rupees. 20

Explanation.— In this section “property” includes property, rights and powers of every description; and “liabilities” includes duties of every description.

CHAPTER XIII

WINDING UP AND DISSOLUTION

Winding up and dissolution.

63. The winding up of a limited liability partnership may be either voluntary or by the Tribunal and limited liability partnership, so wound up may be dissolved. 25

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

64. 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, for a period of more than six months, the number of partners of the limited liability partnership is reduced below two; 30

(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; or 35-

(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 and dissolution.

65. The Central Government may make rules for the provisions in relation to winding up and dissolution of limited liability partnerships. 40

CHAPTER XIV

MISCELLANEOUS

Business transactions of partner with limited liability partnership.

66. 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. 45-

1 of 1956.

67. (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—~~

Application of the provisions of the Companies Act.

(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.

68. (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 affixing digital signature as per the Information Technology 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.

(3) Any information supplied by the Registrar that is certified by the Registrar through affixing digital signature to be a true extract from any document 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.

69. Any document or return required to be filed or registered under this Act with the Registrar, if, is not filed or registered in time provided therein, may be filed or registered after that time upto a period of three hundred days from the date within which it should have been filed, on payment of additional fee of one hundred rupees for every day of such delay in addition to any fee as is payable for filing of such document or return:

Payment additional

Provided that such document or return may, without prejudice to any other action or liability under this Act, also be filed after such period of three hundred days on payment of fee and additional fee specified in this section.

70. In case a limited liability partnership or any partner or designated partner of such limited liability partnership commits any offence, the limited liability partnership or any partner or designated partner shall, for the second or subsequent offence, be punishable with imprisonment as provided, but in case of offences for which fine is prescribed either along with or exclusive of imprisonment, with fine which shall be twice the amount of fine for such offence.

Enhanced punishment.

71. 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.

Application of other laws not barred.

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

Jurisdiction of Tribunal and Appellate Tribunal.

(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.

73. Whoever fails to comply with any order made by the Tribunal under any provision of this Act shall be punishable with imprisonment which may extend to six months and shall also be liable to a fine which shall not be less than fifty thousand rupees.

Penalty on non-compliance of any order passed by Tribunal.

21 of 2000.

1 of 1956.

General penalties.

74. 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 but which shall not be less than five thousand 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.

75. 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 as may be prescribed: 5

Provided that the Registrar shall, before striking off the name of any limited liability partnership under this section, give such limited liability partnership a reasonable opportunity of being heard. 10

Offences by limited liability partnerships.

76. 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 15

(b) to be attributable to any neglect on the part of the partner or partners or designated partner or designated partners 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. 20

Jurisdiction of Court.

77. 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 said offence.

Power to alter Schedules.

78. (1) The Central Government may, by notification in the Official Gazette, alter any of the provisions contained in any of the Schedules to this Act. 25

(2) Any alteration notified under sub-section (1) shall have effect as if enacted in the Act and shall come into force on the date of the notification, unless the notification otherwise directs.

(3) Every alteration made by the Central Government under sub-section (1) 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 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 making any modification in the alteration, or both Houses agree that the alteration should not be made, the alteration shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done in pursuance of that alteration. 30

Power to make rules.

79. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act. 40

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

(a) form and manner of prior consent to be given by designated partner under sub-section (3) of section 7;

(b) the form and manner of particulars of every individual agreeing to act as designated partner of limited liability partnership under sub-section (4) of section 7; 45

(c) the conditions and requirements relating to the eligibility of an individual to become a designated partner under sub-section (5) of section 7;

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

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

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

(g) 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;

10 (h) the manner of serving the documents on a limited liability partnership or a partner or a designated partner and the form and manner in which any other address may be declared by the limited liability partnership under sub-section (2) of section 13;

15 (i) the form and manner of notice to the Registrar and the conditions in respect of change of registered office under sub-section (3) of section 13;

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

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

20 (l) the manner in which an application may be made by an entity under sub-section (1) of section 18;

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

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

(o) the form of notice, the amount of fee payable and the manner of authentication of the statement under clauses (a), (b) and (c) of sub-section (3) of section 25;

30 (p) the manner of accounting and disclosure of monetary value of contribution of a partner under sub-section (2) of section 32;

(q) the books of account and the period of their maintenance under sub-section (1) of section 34;

(r) the form of Statement of Account and Solvency under sub-section (2) of section 34;

35 (s) the form, manner, fee and time of filing of Statement of Account and Solvency under sub-section (3) of section 34;

(t) the audit of accounts of a limited liability partnership under sub-section (4) of section 34;

40 (u) the form and manner of annual return and fee payable under sub-section (1) of section 35;

(v) the manner and amount of fee payable for inspection of incorporation document, names of partners and changes made therein, Statement of Account and Solvency and Annual Return under section 36;

(w) the destruction of documents by Registrar in any form under section 40;

45 (x) the amount required as security under clause (a) of sub-section (3) of section 43;

(y) the amount of security to be given under section 44;

(z) the fee payable for furnishing a copy under clause (b) of sub-section (2) of section 49;

(za) the manner of authentication of report of inspector under section 54;

(zb) the form and manner of particulars about conversion under the proviso to sub-section (1) of section 58; 5

(zc) in relation to establishment of place of business and carrying on business in India by foreign limited liability partnerships and regulatory mechanism and composition under section 59;

(zd) the manner of calling, holding and conducting meeting under sub-section (1) of section 60; 10

(ze) in relation to winding up and dissolution of limited liability partnerships under section 65;

(zf) the manner and conditions for filing document electronically under sub-section (1) of section 68; 15

(zg) the manner for striking off the names of limited liability partnerships from the register under section 75;

(zh) the form and manner of statement containing particulars and amount of fee payable under sub-paragraph (a) of paragraph 4 of the Second Schedule;

(zi) the form and manner of particulars about conversion under proviso to paragraph 5 of the Second Schedule; 20

(zj) the form and manner of the statement and the amount of fee payable under sub-paragraph (a) of paragraph 3 of the Third Schedule; and

(zk) the form and manner of particulars about conversion under the proviso to paragraph 4 of the Third Schedule; 25

(zl) the form and manner of the statement and amount of fee payable under sub-paragraph (a) of paragraph 4 of the Fourth Schedule; and

(zm) the form and manner of particulars about conversion under the proviso to paragraph 5 of the Fourth Schedule.

(3) Every rule made under this Act by the Central Government 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 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 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 be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule. 30

80. (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; 35

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. 40

1 of 1956. **81. Until the Tribunal and the Appellate Tribunal are constituted under the provisions of the Companies Act, 1956, the provisions of this Act shall have effect subject to the following modifications, namely:-** Transitional provisions.

5 (a) for the word "Tribunal" occurring in clause (b) of sub-section (1) of section 41, clause (a) of sub-section (1) of section 43 and section 44, the words "Company Law Board" had been substituted;

(b) for the word "Tribunal" occurring in section 51 and in sections 60 to 64, the words "High Court" had been substituted;

10 (c) for the words "Appellate Tribunal" occurring in sub-section (2) of section 72, the words "High Court" had been substituted.

THE FIRST SCHEDULE

[See section 23(4)]

PROVISIONS REGARDING MATTERS RELATING TO MUTUAL RIGHTS AND DUTIES OF PARTNERS AND LIMITED LIABILITY PARTNERSHIP AND ITS PARTNERS APPLICABLE IN THE ABSENCE OF ANY AGREEMENT ON SUCH MATTERS

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 on any matter, by the provisions in this Schedule. 5

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. 10

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 15

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

4. Every partner shall indemnify the limited liability partnership for any loss caused to it by his fraud in the conduct of the business of the limited liability partnership.

5. Every partner may take part in the management of the limited liability partnership. 20

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

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

8. Any matter or issue relating to the limited liability partnership shall be decided by a 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. 25

9. Every limited liability partnership shall ensure that decisions taken by it are recorded in the minutes within thirty days of taking such decisions and are kept and maintained at the registered office of the limited liability partnership. 30

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

11. 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. 35

12. 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. 40

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

14. All disputes between the partners arising out of the limited liability partnership agreement which cannot be resolved in terms of such agreement shall be referred for arbitration as per the provisions of the Arbitration and Conciliation Act, 1996. 45

26 of 1996.

THE SECOND SCHEDULE

(See section 55)

CONVERSION FROM FIRM INTO LIMITED LIABILITY PARTNERSHIP

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

Interpretation

9 of 1932.

5- (a) "firm" means a firm as defined in section 4 of the Indian Partnership Act, 1932;

1- (b) "convert", in relation to a firm converting into 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 this Schedule.

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

Conversion from firm into 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.

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

Eligibility for conversion.

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

Statements to be filed.

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

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

9 of 1932. 21- (ii) the date on which the firm was registered under the Indian Partnership Act, 1932 or under any other law, if applicable, and

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

9- 5. On receiving the documents referred to in paragraph 4, the Registrar shall subject to the provisions of this Act, 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:

Registration of conversion.

9 of 1932.

31- Provided that the limited liability partnership shall, within fifteen days of the date of registration, inform, the concerned Registrar of Firms with which it was registered under the provisions of the Indian Partnership Act, 1932 about the conversion and of the particulars of the limited liability partnership in such form and manner as the Central Government may prescribe.

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.

40- Provided that an appeal may be made before the Tribunal in case of refusal of registration by the Registrar.

(2) The Registrar may, in any particular case, require the documents referred to in paragraph 4 to be verified in such manner, as he considers fit.

7. On and from the date of registration specified in the certificate of registration issued under paragraph 5,—

Effect of registration.

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

(b) all tangible (movable and immovable) property as well as 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; and

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

Registration in relation to property.

8. If any property to which sub-paragraph (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 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.

Pending proceedings.

9. 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.

Continuance of conviction, ruling, order or judgment.

10. 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.

Existing agreements.

11. 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 date as if —

(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.

Existing contracts, etc.

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

13. Every contract of employment to which paragraph 11 or paragraph 12 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.

14. (1) Every appointment of the firm 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 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 7 to 14.

15. The provisions of paragraphs 7 to 14 (both inclusive) shall apply to any approval, permit or licence issued to the firm under any other Act which is in force immediately before the date of registration of the limited liability partnership, subject to the provisions of such other Act under which such approval, permit or licence has been issued.

Partner liable for liabilities and obligations of firm before conversion.

16. (1) Notwithstanding anything in paragraphs 7 to 14 (both inclusive), every partner of a firm that has converted into 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.

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(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.

5- 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:

Notice of
conversion in
correspondence.

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

10 (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 56)

CONVERSION FROM PRIVATE COMPANY INTO LIMITED LIABILITY PARTNERSHIP

Interpretation.

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

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

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1 of 1956.

(b) "convert", in relation to a private company converting into 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.

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Eligibility for conversion of private companies into limited liability partnership.

2. (1) A company may convert into 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 into 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

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(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 into 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.

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Statements to be filed.

3. A company may apply to convert into 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:—

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

(ii) the date on which the company was incorporated; 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 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:

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Provided that the limited liability partnership shall, within fifteen days of the date of registration, inform the concerned Registrar of Companies with which it was registered under the provisions of the Companies Act, 1956 about the conversion and of the particulars of the limited liability partnership in such form and manner as the Central Government may prescribe.

35
1 of 1956.

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:

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Provided that an appeal may be made before the Tribunal in case of refusal of registration by the Registrar.

(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.

6. On and from the date of registration specified in the certificate 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;
- 5 (b) all tangible (movable or immovable) and intangible 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
- 10 (c) the company shall be deemed to be dissolved and removed from the records of the Registrar of Companies.
7. If any property to which clause (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 form and manner as the authority may determine. Registration in relation to property.
- 15 8. 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. Pending proceedings.
- 20 9. 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 judgment.
- 25 10. 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 date as if — Existing agreements.
- 30 (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.
- 35 11. 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.
- 40 12. Every contract of employment to which paragraph 10 or paragraph 11 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.
- 45 13. (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.
- 50 14. The provisions of paragraphs 6 to 13 (both inclusive) shall apply to any approval, permit or licence issued to the company under any other Act which is in force immediately before the date of registration of the limited liability partnership, subject to the provisions of such other Act under which such approval, permit or licence has been issued. Application of paragraphs 6 to 13.

Notice of
conversion in
correspondence.

15. (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:—

(a) a statement that it was, as from the date of registration, converted from a company into 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.

THE FOURTH SCHEDULE
(See section 57)

CONVERSION FROM UNLISTED PUBLIC COMPANY INTO LIMITED LIABILITY PARTNERSHIP

1. (1) In this Schedule, unless the context otherwise requires,—
- Interpretation.
- 5- (a) "company" means an unlisted public company;
- (b) "convert", in relation to a company converting into 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 provisions of this Schedule;
- 10 (c) "listed company" means a listed company as defined in the Securities Exchange Board of India (Disclosure and Investor Protection) Guidelines, 2000 issued by the Securities and Exchange Board of India under section 11 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.
- 15- 2. (1) A company may convert into a limited liability partnership by complying with the requirements as to the conversion set out in this Schedule.
- Conversion of company into a limited liability partnership.
- (2) Upon such conversion, the company, its shareholders, the limited liability partnership into 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.
- 20 3. A company may apply to convert into a limited liability partnership in accordance with the provisions of 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.
- 25- 4. A company may apply to convert into 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 fee as the Central Government may prescribe containing the following particulars, namely:—
- 30 (i) the name and registration number of the company;
- (ii) the date on which the company was incorporated; and
- (b) incorporation document and statement referred to in section 11.
- 35- 5. On receiving the documents referred to in paragraph 4, 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.
- Registration of conversion.
- 40 Provided that the limited liability partnership shall, within fifteen days of the date of registration, inform the concerned Registrar of Companies with which it was registered under the provisions of the Companies Act, 1956 about the conversion and of the particulars of the limited liability partnership in such form and manner as the Central Government may prescribe.
- 1 of 1956. 45- 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.

Provided that an appeal may be made before the Tribunal in case of refusal of registration by the Registrar.

(2) The Registrar may, in any particular case, require the documents referred to in paragraph 4 to be verified in such manner, as he considers fit.

Effect of registration.

7. On and from the date of registration specified in the certificate of registration issued under paragraph 5—

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

(b) all tangible (movable or immovable) and intangible 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 as required by the relevant authority to notify the authority of the conversion and of the particulars of the limited liability partnership in such form and manner as the authority may determine.

Pending proceedings.

9. 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.

Continuance of conviction, ruling, order or judgment.

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 of such nature that the rights and liabilities thereunder could be assigned, shall have effect as from that date 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.

Existing contracts, etc.

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.

Continuance of employment.

13. Every contract of employment to which paragraph 11 or 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.

Existing appointment, authority or power.

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.

(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.

5 15. The provisions of paragraphs 7 to 14 (both inclusive) shall apply to any approval, permit or licence issued to the company under any other Act which is in force immediately before the date of registration of the limited liability partnership, subject to the provisions of such other Act under which such approval, permit or licence has been issued. 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 into a limited liability partnership; and

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

11 (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, organise 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 organising 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. Keeping in mind the need of the day, the Government had introduced the Limited Liability Partnership Bill, 2006 in the Rajya Sabha on the 15th December, 2006. It was referred to the Department Related Parliamentary Standing Committee on Finance for examination and report. The Hon'ble Committee presented its 58th Report to the Lok Sabha on 27th November, 2007 and also laid the said Report in the Rajya Sabha on the same day. The Hon'ble Committee made several recommendations which were examined and considered by the Government. Most of the recommendations made by the Hon'ble Committee have been accepted by the Government. Based on the recommendations of the Hon'ble Committee, extensive changes were found to be necessary in the Bill. Hence, it is proposed to withdraw the Limited Liability Partnership Bill, 2006 and introduce a fresh Bill incorporating the changes.

4. The salient features of the Limited Liability Partnership Bill, 2008, *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 provisions 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 unauthorised actions of other partners or their misconduct. The liabilities of the LLP and partners who are found to have 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 LLP.

(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 compromise or arrangement including merger and amalgamation of LLPs shall be in accordance with the provisions of the proposed legislation;

(viii) a firm, private company or an unlisted public company would be allowed to be converted into LLP in accordance with the provisions of the proposed Bill. Upon such conversion, on and from the date of certificate of registration issued by the Registrar in this regard, the effects of the conversion shall be such as are specified in the proposed Bill. On and from the date of registration specified in the certificate of registration, all tangible (movable or immovable) and intangible property vested in the firm or the company, all assets, interests, rights, privileges, liabilities, obligations relating to the firm or the company, and the whole of the undertaking of the firm or the company, shall be transferred to and shall vest in the LLP without further assurance, act or deed and the firm or the company, shall be deemed to be dissolved and removed from the records of the Registrar of Firms or Registrar of Companies, as the case may be;

(ix) the winding up of the LLP may be either voluntary or by the Tribunal to be established under the Companies Act, 1956. Till the Tribunal is established, the power in this regard has been given to the High Court;

(x) the proposed legislation would confer powers on the Central Government to apply provisions of the Companies Act, 1956 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;

(xi) the Indian Partnership Act, 1932 shall not be applicable to LLPs.

5. The Bill seeks to achieve the above objectives.

NEW DELHI;

PREM CHAND GUPTA.

The 2nd May, 2008.

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 becomes 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 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. The clause also indicates the disqualifications which will prohibit an individual to become a partner of any LLP.

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. This clause also seeks to provide that an individual shall not become a designated partner in any LLP unless he has given his prior consent to act as such to the LLP in the prescribed form and manner. Particulars of every designated partner who agrees to act as such shall be filed with the Registrar. This clause also seeks to provide that any partner may become or cease to be designated partner in accordance with the LLP agreement. It also seeks to empower Central Government to make rules for prescribing conditions and requirements for an individual to be a designated partner. It also provides that every designated partner shall obtain a Designated Partner Identification Number (DPIN) from the Central Government.

Clause 8.— This clause seeks to provide responsibilities and liabilities of the designated partner who shall be –

(a) responsible 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 9.— This clause provides for the 30 days 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 10.— This clause seeks to provide punishment for contravention of clauses 7, 8 and 9 of the Bill. The said clause indicates 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 sub-clause (5) of clause 7, clauses 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, the fees 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 lakhs 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. The said clause indicates that the certificate of registration shall be conclusive evidence that the LLP is incorporated by the name specified therein.

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 and subject to prescribed conditions 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 sue and be sued, acquire, own, hold and develop or dispose of property. It also seeks to provide that an LLP may have a common seal if it decides to have it.

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. This 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 that in case the LLP fails to comply with such direction it shall be liable for imposition of a fine of not less than ten thousand rupees which may extend to five lakh rupees and the designated partner of such LLP shall be liable to pay fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees.

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.— The 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 shall not be less than fifty thousand rupees but 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, official correspondence and publications bear the name, address of its registered office 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 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 and disqualifications under which or pursuant to which a person may cease to be a partner of an LLP. It also seeks to provide for a partner's obligation to the LLP or to the other partners or to other persons incurred during the period when he was a 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 names and addresses of partners of the LLP to the Registrar. The notice shall be in such form as may be prescribed. The clause also seeks to provide that every partner shall inform the LLP of any change in his name or address within fifteen days of such change, failing which he shall be punishable with fine which shall not be less than two thousand rupees but which may extend to twenty-five thousand rupees. This clause further seeks to provide that when a person becomes or ceases to be a partner, the LLP shall file a notice with the Registrar within thirty days from the date such person becomes or ceases to be a partner, failing which the LLP shall be punishable with fine which shall not be less than two thousand rupees but which may extend to twenty-five thousand rupees.

Clause 26.— This clause seeks to provide that every partner of the LLP is, for the purpose of business of the LLP, an 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.

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. 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 29.— This clause seeks to provide that any person, who by words spoken or written or by conduct, represents himself, or knowingly permits himself to be represented to be a partner in any LLP is liable to any person who has on the faith of any such representation given credit to the LLP, whether the person representing himself or represented to be a partner does or does not know that the representation has reached the person so giving credit. It also seeks to provide that where any credit is received by the LLP as a result of such representation, the LLP shall, without prejudice to the liability of the person so representing himself or represented to be a partner, be liable to the extent of credit received by it or any financial benefit derived thereon. The clause further seeks to provide that where after a partner's death the business is continued in the same LLP name, the continued-use of that name or of the deceased partner's name as a part thereof shall not of itself make his legal representative or his estate liable for any act of the LLP done after his death.

Clause 30.— 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. The clause further seeks to provide that where an LLP or any partner or designated partner or employee of such LLP has conducted the affairs of the LLP in a fraudulent manner, then without prejudice to any criminal proceedings which may arise under any law for the time being in force, the LLP and any such partner or designated partner or employee shall be liable to pay compensation to any person who has suffered any loss or damage by reason of such conduct.

Clause 31.— This clause seeks to provide that the Court or Tribunal may reduce or waive any penalty leviable against any partner or employee of a 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 32.— 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 33.— 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 34.— This clause seeks to provide for requirement relating to maintenance of proper books of account by the LLP relating to its affairs for each year and for filing of an annual Statement of Account 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 audit requirement. It also seeks to provide for imposition of a fine of not less than twenty-five thousand 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 35.— This clause seeks to provide that every LLP shall be required to file with the Registrar an annual return duly authenticated every year. It also seeks to empower the Central Government to prescribe, by rules, the contents and manner of filing 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 twenty-five thousand 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 36.— This clause seeks to provide that the incorporation document, names of partners and changes, if any, made therein, Statement of Account 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 37.— 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 38.— This clause seeks to empower the Registrar to call for information, for the purposes of carrying out the provisions of this Bill, from any person including any present or former partner or designated partner or employee of the LLP and in case of non-receipt of any information from them or information furnished being insufficient, to summon them before him. 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 39.— 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 40.— 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 41.— 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 42.— 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 43.— This clause seeks to provide the circumstances under which investigation of the affairs of an LLP may be ordered and the inspectors appointed by the Central Government to carry out such investigation.

Clause 44.— 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 45.— This clause seeks to prohibit a firm, body corporate or other association to be appointed as an inspector.

Clause 46.— 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 47.— This clause seeks to provide the duty of the designated partners 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 so 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 48.— 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 are kept, search and seize the documents or books and papers relating to LLP, after seeking permission from the Judicial Magistrate of the 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 49.— 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 the Central Government by the inspector. This clause further seeks to provide that the Central Government shall forward a copy of the report other than an 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 50.— This clause seeks to provide that if, from the inspector's 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, other employees and agents of the LLP to give the Central Government all assistance in connection with such prosecution.

Clause 51.— 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 the report made by an Inspector under clause 49 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 the affairs of the LLP are not being conducted in accordance with the provisions of the Bill, the Central Government, may, cause to be presented to the Tribunal by any person authorised by it, a petition for the winding up of the LLP on the just and equitable grounds.

Clause 52.— 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 53.— 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 a 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 to the Central Government shall be recoverable as arrears 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 54.— 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 in relation to any matter contained in the report.

Clause 55.— This clause seeks to provide that a firm may convert into a LLP in accordance with the provisions contained in Chapter X and the Second Schedule.

Clause 56.— This clause seeks to provide that a private company may convert into a LLP in accordance with the provisions contained in Chapter X and the Third Schedule.

Clause 57.— This clause seeks to provide that an unlisted public company may convert into a LLP in accordance with the provisions contained in Chapter X and the Fourth Schedule.

Clause 58.— This clause seeks to provide the requirement and manner pursuant to which a firm, private company or an unlisted public company shall be allowed to be converted into a LLP. It also seeks to provide that the converted LLP shall, within fifteen days of the date of registration, inform the concerned Registrar of Firms or Registrar of Companies, as the case may be, with which it was registered about the conversion and of the particulars of the limited liability partnership in such manner and form as the Central Government may prescribe. The clause also seeks to provide that on such conversion all property of the erstwhile entity shall vest in the LLP and the erstwhile entity shall be deemed to be dissolved and removed from the records of the Registrar of Firms or Registrar of Companies, as the case may be.

Clause 59.— This clause seeks to empower the Central Government to make rules for (i) provisions in relation to establishment of place of business by foreign LLPs 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 or (ii) such regulatory mechanism with such composition as may be prescribed in such rules.

Clause 60.— This clause seeks to provide the manner in which compromise or arrangement of LLPs shall be proposed, agreed by members or creditors of a LLP and confirmed by the Tribunal. It also seeks to provide the time-limit within which the order made by Tribunal shall be filed with the Registrar and the effect of such filing. It also seeks to provide that if default is made in complying with provisions relating to filing of such order of Tribunal with the Registrar, the LLP and every designated partner of the LLP shall be punishable with fine which may extend to one lakh rupees.

Clause 61.— This clause seeks to provide that where the Tribunal makes an order sanctioning a compromise or an arrangement in respect of a LLP, it—

(a) shall have power to supervise the carrying out of the compromise or an arrangement; and

(b) may, at the time of making such order or at any time thereafter, give such directions in regard to any matter or make such modifications in the compromise or arrangement, as it may consider necessary, for the proper working of the compromise or arrangement.

The said clause further seeks to provide that if the Tribunal is satisfied that a compromise or an arrangement sanctioned cannot be worked satisfactorily, it may make an order for winding up of the LLP.

Clause 62.— This clause seeks to provide that where an application is made to the Tribunal for sanctioning of a compromise or arrangement which relates to reconstruction of any LLP or LLPs, or the amalgamation of any two or more LLPs and under a scheme the whole or any part of the undertaking, property or liabilities of any LLP concerned in the scheme is to be transferred to another LLP, the Tribunal may, either by the order sanctioning the compromise or arrangement or by a subsequent order, make provisions for matters like transfer to the transferee LLP of the whole or any part of the undertaking, property or liabilities of any transferor LLP, the continuation by or against the transferee LLP of any legal proceedings pending by or against any transferor LLP; the dissolution, without winding up, of any transferor LLP; the provision to be made for any person who, within such time and in such manner as the Tribunal directs, dissent from the compromise or arrangement; and such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out. It also seeks to provide that if default is made in complying with provisions relating to filing of such order of Tribunal with the Registrar, the LLP and every designated partner of the LLP shall be punishable with fine which may extend to fifty thousand rupees.

Clause 63.— This clause seeks to provide that the winding up of an LLP may be either voluntary or by the Tribunal and a LLP so wound up may be dissolved.

Clause 64.— This clause seeks to specify the circumstances in which an LLP may be wound up by the Tribunal.

Clause 65.— This clause seeks to empower the Central Government to make rules for provisions in relation to winding up and dissolution of LLPs.

Clause 66.— 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 67.— 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 such modification as may be approved by both the Houses.

Clause 68.— 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 such manner and as per such conditions as may be prescribed by rules by the Central Government.

Clause 69.— This clause seeks to provide that any document or return required to be filed or registered under this Act with the Registrar, if, is not filed or registered in time provided therein, may be filed or registered after that time up to a period of three hundred days from the date within which it should have been filed, on payment of additional fees of one hundred rupees for every day of such delay in addition to any fees as is payable for filing of such document or return. The clause also provides that such document or return may, without prejudice to any other action or liability under this Act, also be filed after such period of three hundred days on payment of fees and additional fees specified in this section.

Clause 70.— This clause seeks to provide that in case a LLP or any partner or designated partner of such LLP commits any offence, the LLP or any partner or designated partner shall, for the second or subsequent offence, be punishable with imprisonment as provided; but in case of offence for which fine is prescribed either along with or exclusive of imprisonment, with fine which shall be twice the amount of fine for such offence.

Clause 71.— 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 72.— This clause seeks to provide that the Tribunal shall discharge such powers and perform such functions as are, or may be, conferred on it by or under the provisions of

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 73.— This clause seeks to provide that whoever fails to comply with any order made by the Tribunal under any provision of this Bill shall be punishable with imprisonment which may extend to six months and shall also be liable to a fine which shall not be less than fifty thousand rupees.

Clause 74.— 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 but which shall not be less than five thousand 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 75.— 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 which shall be followed for such striking off of name of any LLP by the Registrar. The clause also seeks to provide that Registrar shall, before striking off the name of any LLP under this clause give such LLP a reasonable opportunity of being heard.

Clause 76.— 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 or designated partner of the LLP or is attributable to any neglect on the part of the partner or designated partner of that LLP, the partner or designated partner 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 77.— 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 the provisions of this Bill and shall have power to impose punishment in respect of the said offence.

Clause 78.— This clause seeks to confer upon the Central Government the power to alter schedules to the Bill. The said clause further seeks to provide that every notification in respect of such alteration shall be laid before both the Houses of Parliament.

Clause 79.— 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 made under the provisions of this Bill is required to be laid before both the Houses of Parliament.

Clause 80.— 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.

Clause 81.— This clause seeks to provide that until the Tribunal and the Appellate Tribunal are constituted under the provisions of the Companies Act, 1956, the provisions of this Bill shall have effect subject to the following modifications, namely:—

(a) for the word “Tribunal” occurring in clause (b) of sub-section (1) of section 41, clause (a) of sub-section (1) of section 43 and section 44, the words “Company Law Board” had been substituted;

(b) for the word “Tribunal” occurring in section 51 and in sections 60 to 64, the words “High Court” had been substituted;

(c) for the words “Appellate Tribunal” occurring in sub-section (2) of section 72, the words “High Court” had been substituted.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clause (d) 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 67 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 78 of the Bill confers power upon the Central Government to alter any of the provisions contained in any of the Schedules to this Act publication of notification in the Official Gazette.

4. Clause 79 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 prior consent to be given by designated partner under sub-section (3) of section 7; form and manner of particulars of every individual agreeing to act as designated partner of LLP under sub-clause (4) of clause 7; conditions and requirements for appointment of an individual as Designated Partner under sub-clause (5) of clause 7; manner of filing the incorporation document and payment of fee payable thereof with the Registrar under item (b) of sub-clause (1) of clause 11; form of statement to be filed under item (c) of sub-clause (1) of clause 11; form of incorporation document under item (a) of sub-clause (2) of clause 11; other information to be contained in the incorporation document under item (g) of sub-clause (2) of clause 11; mode of serving the documents on a LLP or a partner or a designated partner and the form and manner in which any other address may be declared by the LLP under sub-clause (2) of clause 13; the form and manner of notice to the Registrar and conditions in respect of change of registered office under sub-clause (3) of clause 13; the form and manner of application and amount of fee payable to the Registrar under sub-clause (1) of clause 16; manner in which names will be reserved by the Registrar under sub-clause (2) of clause 16; 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; form and manner of filing of LLP Agreement or any change in such agreement with the Registrar and the amount fee payable under sub-clause (2) of clause 23; form of notice, the amount of fee payable and the manner of authentication of the statement under items (a), (b) and (c) of sub-clause (3) of clause 25; manner of accounting and disclosure of monetary value of contribution of a partner under sub-clause (2) of clause 32; books of account and the period of their maintenance under sub-clause (1) of clause 34; form of statement of Account and Solvency under sub-clause (2) of clause 34; form, manner and time of filing of statement of account and solvency and the amount of fee payable under sub-clause (3) of clause 34; the manner in which the accounts of a LLP shall be audited under sub-clause (4) of clause 34; form and manner of filing of annual return under sub-clause (3) of clause 35; manner and amount of fee payable for inspection of incorporation documents, names of the partners, Statement of Account and Solvency and annual return under clause 36; destruction of documents by Registrar under clause 40; the amount required as security under item (a) of sub-clause (3) of clause 43; the amount of security to be given under clause 44; fee payable for furnishing a copy under item (b) of sub-clause (2) of clause 49; manner of authentication of report of inspector under clause 54; manner and form of particulars about conversion under proviso to sub-clause (1) of clause 58; provisions in relation to establishment of place of business by foreign LLPs within India and regulatory mechanism and composition under clause 59; manner of calling, holding and conducting meeting under sub-clause (1) of clause 60; provisions in relation to winding up and dissolution of LLPs under clause 65; manner and conditions for filing a

document electronically under sub-clause (1) of clause 68; manner for striking off the names of LLPs from the register of LLPs by the Registrar under clause 75; medium and form of statement containing particulars and amount of fee payable on the statement under sub-paragraph (a) of paragraph 4 of the Second Schedule; manner and form of particulars about conversion under proviso to paragraph 5 of the Second Schedule; form and manner of the statement and the amount of fee payable on the statement under sub-paragraph (a) of paragraph 3 of the Third Schedule; manner and form of particulars about conversion under proviso to paragraph 4 of the Third Schedule; form and manner of the statement and amount of fees payable under sub-paragraph (a) of paragraph 4 of the Fourth Schedule; manner and form of particulars about conversion under proviso to 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.

5. Clause 80 of the Bill empowers the Central Government to remove, by order, any difficulty which may arise in giving effect to the proposed legislation. It has been provided that no such order shall be made after the expiry of a period of two years from the date of commencement of the proposed legislation. It has also been provided that a copy of every such order made shall be laid before each House of Parliament.

6. The notification issued under sub-clause (1) of clause 67, 78 and rules made under sub-clause (2) of clause 79 shall be laid before each House of Parliament.

7. 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.

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

(Shri Prem Chand Gupta, Minister of Corporate Affairs)