



Checklist of Clauses in LLP Agreement

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1. Introduction

The Limited Liability Partnership Act, 2009 ("the Act") defines "Limited liability partnership agreement" as "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 [s.2(1)(0)]."

The Act allows lot of flexibility to the partners of an LLP to organise their internal structure based on the mutually arrived LLP agreement [see para 2 of the Statement of Objects & Reasons appended to LLP Bill 2008]. To illustrate, s.22 of the LLP Act states that a person may become a partner of the LLP by and in accordance with the LLP Agreement.

Again, the tax consequences could vary depending on the provision in the LLP Agreement or its omission. To illustrate, interest to partners could be deductible in computing the income of the LLP only if it is authorised by, and is in accordance with the LLP Agreement [s.40(b)] of the Income Tax Act 1961.

In view of this, it is very important from commercial, legal as well as fiscal perspective to make suitable provisions in the LLP Agreement on various matters. This article attempts to give a checklist of topics which could be covered in the LLP Agreement. For easy reference, and to understand the implications, the corresponding section and rules are also given.

2. Checklist

Sr. No.	Particulars	Relevant provision
1.	Interpretation / Definitions	
2.	Names of designated partners and changes	s. 7(1) and s. 7(2) r.w. rules 7 to 9 of the LLP Rules
3.	Association clause : The partners have associated for carrying on a lawful business with a view to profit	s. 11(1)
4.	Name of the LLP and changes in it	s. 15, 16, 19
5.	Business of the LLP and changes in it	s. 23(4) r.w. rule 1/8 in the First Schedule
6.	Registered office of the LLP and changes in it	s. 13, rule 17 of the LLP Rules
7.	Cost and expenses of setting up the LLP	
8.	Adoption (generally or specifically) of any preincorporation contacts	

9.	Common seal	
10.	Term of LLP	
11.1	Management of the LLP (including managing partner, if any, and removal of managing partner)	
11.2	Extent of rights of partner to take part in management of the LLP	s. 23(4) r.w. rule 1/5 in the First Schedule
11.3	Acts forbidden without the consent of other partners	
11.4	Manner in which any matter or issue relating to LLP shall be decided	s. 23(4) r.w. rule 1/8 in the First Schedule
11.5	Voting rights of partners	s. 23(4) r.w. rule 1/8 in the First Schedule
12.1	Mutual rights of partners of the LLP	s. 23(1) r.w. rule 1 in the First Schedule
12.2	Mutual duties of the partners of the LLP	s. 23(1) r.w. rule 1 in the First Schedule
12.3	Mutual rights of the LLP vis-à-vis its partners	s. 23 r.w. rule 1 in the First Schedule
12.4	Mutual duties of the LLP vis-à-vis its partners	s. 23 r.w. rule 1 in the First Schedule
12.5	Authorities of partners	s. 27(1)
12.6	Rights and limitations of a partner to carry on a business competing with the LLP and consequences of such business being carried on	s. 23(4) r.w. rule 1/11 in the First Schedule
12.7	Obligation of a partner to render true accounts and full information of all things affecting the LLP	s. 23(4) r.w. rule 10 r.w. rule 1 in the First Schedule
12.8	Obligation of a partner to account for personal benefits from transactions concerning the LLP or from use of property, name or business connection of the LLP	s. 23(4) r.w. rule 1/rule 12 of the First Schedule
13.	Admission of partners	s. 22, s. 23(4) r.w. rule 1/7 in the First Schedule
14.1	Circumstances in which LLP shall indemnify a partner	s. 23(4) r.w. rule 1/3 in the First Schedule
14.2	Circumstances in which a partner shall indemnify the LLP	s. 23(4) r.w. rule 1/4 in the First Schedule
15.1	Capital of the LLP	
15.2	Share of partners in capital of the LLP	s. 23(4) r.w. rule 2 in the First Schedule
15.3	Contribution by partners	s. 32/33
16.1	Interest to partners	
16.2	Remuneration of partners	s. 23(4) r.w. rule 1/6 in the First Schedule
17.1	Accounts, books of account & method of accounting	s. 34(1)
17.2	Appointment, remuneration & removal of auditors	rules 24(10) to 24(12), rule 24(14), 24(17) & 24(18) of the LLP Rules

17.3	Circumstances in which audit shall be carried out even if it is not mandatory (if it is desired to provide for this)	rule 24(8) of the LLP Rules
18.1	Banking arrangements	
18.2	Signatories to cheques, etc.	
19.1	Rights of partners in share of profits of LLP	s. 42(1)
19.2	Liabilities of partners in losses of LLP	s. 42(1)
20.1	Drawings of partners	
20.2	Distributions by LLP	
21.1	Cessation of partnership interest of a partner	s. 24(1)
21.2	Expulsion of a partner	s. 23(4) r.w. rule 1 & rule 13 of the First Schedule
21.3	Mode of computation of amount payable to a partner upon cessation of his interest	s. 24
21.4	Payments following cessation, of partner's interest	
21.5	Rights of partners post cessation	
21.6	Rights of legal representatives of partners	s. 23(4) r.w. rule 1/11 in the First Schedule
22.	Rights of transferee partners (if it is desired to give such rights)	s. 42(3)
23.	Circumstances in which LLP may apply to Central Government to investigate its affairs (if it is desired to provide for this)	s. 43(3)(b)
24.	Circumstances in which LLP may apply to the Tribunal in connection with a compromise or arrangement between LLP and its creditors or partners (if it is desired to provide for this)	s. 60(1)
25.1	Circumstances in which LLP should be wound up voluntarily	s. 63
25.2	Circumstances in which LLP should be wound up by the Tribunal	s. 64(a)
26.1	Meetings and proceedings at such meetings	
26.2	Manner in which decisions of the LLP shall be recorded	s. 23(4) r.w. rule 1/9 in the First Schedule
26.3	Minutes – Entry in minute books, place of maintenance, etc.	s. 23(4) r.w. rule 1/10 in the First Schedule
27.	Address for service of documents	rule 16 of the LLP Rules
28.	Changes in LLP Agreement	rule 21 of the LLP Rules
29.	Settlement of dispute (including arbitration)	s. 23(4) r.w. rule 1/14 in the First Schedule
30.	General provisions (binding on heirs, successors and assigns, counterparts, severability, waiver, entire agreement, notices, governing law, etc.)	