

## Recent MCA Notifications – Transparency, Governance & Ease of Doing Business

### Provisions of the Companies Act, 2013 now applicable to a Limited Liability Partnership (LLP)

#### Notification dated February 11, 2022

The Central Government, under the provisions of Section 67 of the Limited Liability Partnership (LLP) Act 2008, is empowered to notify applicability of provisions under the Companies Act, 2013 to be applicable to LLPs as well, with such adaptation, modification or exception.

Accordingly, in pursuance to Section 67(1) of the LLP Act 2008, Central Government has directed that the following provisions of the Companies Act, 2013 will become applicable to Limited Liability Partnerships (LLPs), including filing for Significant Beneficial Ownership (SBO), Disqualifications of Designated Partners (DP), Maximum Limit of LLPs in which a person can maintain the Office of DP etc. The Notification has wide ramifications since LLPs shall be subject to greater scrutiny and will have to comply with additional and stringent requirements:

Sr. No.	Section (Under Companies Act, 2013)	Description	Impact
1	Section 90 (1) to 90 (11)	Significant Beneficial Ownership	<p>As Body Corporates are eligible to become Partner / Designated Partner in an LLP, it has become pertinent to identify individual/(s) behind the corporate structure, holding direct and/or indirect majority stake as being Significant Beneficial Owner/(s).</p> <p>Any LLP having body corporate/(s) as DP shall have to file Form BEN 2 and provide details for the purpose of identifying the ultimate beneficial owner in the LLP.</p>
2	Section 164	Disqualifications for appointment of Director	<p><b>A person shall not become Designated Partner (DP) of an LLP under any of the following circumstances [as specified under Section 164(1)]:</b></p> <ul style="list-style-type: none"> <li>- being declared as person of unsound mind;</li> <li>- being undischarged insolvent;</li> <li>- being convicted by court of any offence including moral turpitude;</li> <li>- being convicted of offence in respect of related party transaction;</li> <li>- non-compliance of provisions relating to maximum of designated partnership, etc.</li> </ul>

Sr. No.	Section (Under Companies Act, 2013)	Description	Impact
			<p><b>A person shall not continue as a DP in an LLP or be appointed to another LLP for a period of five years from the date of the following:</b></p> <p>failure in filing the Statement of Account and Solvency or Annual Returns for any continuous period of three financial years;</p> <p><b>Comment:</b></p> <ul style="list-style-type: none"> <li>A Person cannot continue as a DP in the defaulting LLP nor be appointed as a DP in another LLP but shall also have to vacate office in all the other LLPs in which the Person is a DP.</li> </ul> <p>There seems to be a drafting error for sub section 2 (b), with respect to repayment / redemption of Deposits / Debentures as these instruments cannot be issued by an LLP. Rectification to this clause should be notified by the MCA shortly.</p>
3	Section 165	Number of Directorship / DP	<p>A person cannot continue as a DP in more than 20 LLPs. In other words, a person cannot hold office of DP in more than 20 LLPs.</p> <p>For appointment of DP in violation of this provision, a fine of Rs. 5,000 is to be levied, subject to a maximum fine of Rs. 25,000.</p> <p>[Note: within a period of one year from the Notification, the Person has to resign his office of DP of LLPs in excess of 20 in which he is a DP. The intimation of resignation has to be provided to all such LLPs as well as to the Registrar where each such LLP is registered].</p>
4	Section 167	Vacation of office of Director / DP	<p>The provisions applicable to vacation of office of Director are now applicable to vacation of the office of DP including:</p> <ul style="list-style-type: none"> <li>disqualification as given under the provisions of section 164 applicable to LLP</li> <li>absent from Meetings of DP held within a period of 12 months</li> <li>contravenes the provisions of section 184</li> <li>failure of disclosure of interest in a contract or arrangement</li> <li>disqualified by order of Court or Tribunal</li> </ul> <p>A person functioning as a DP after the office of DP becoming vacant for any of the causes for disqualifications is punishable with a fine of not less than one lakh rupees which can extend to five lakh rupees.</p>

Sr. No.	Section (Under Companies Act, 2013)	Description	Impact
5	Section 206(5)	Power to Call for Information, Inspect Books and Conduct Inquiries	The Central Government may direct the Registrar or an Inspector appointed by it to inspect the books and papers of an LLP, if it so deems fit.
6	Section 207(3)	Registrar / Inspector shall have all the powers of civil court under the Code of Civil Procedure, 1908	The Registrar / Inspector conducting the inspection or inquiry shall have the powers vested in a civil court under the Code of Civil Procedure, 1908 in respect of the following: <ul style="list-style-type: none"> <li>power to demand for discovery and production of books of account / other documents of LLP</li> <li>to summon and enforce attendance of any person</li> <li>to examine such person under oath</li> <li>inspect any books, registers or other documents of LLP at any place.</li> </ul>
7	Section 252	Appeal to National Company Law Tribunal (NCLT) against order of RoC notifying a company as dissolved under section 248 of Companies Act 2013.	An Appeal to the Tribunal can be made by any person or the LLP / Partner / Workman / Creditor against the strike off / dissolution order passed under Section 75 of the Act. <ul style="list-style-type: none"> <li>Filing an appeal by any person aggrieved by the Order shall be made within a period of 3 years from the date of the Order of the Registrar.</li> <li>If the LLP / Partner / Workman / Creditor is aggrieved by the LLP having its name struck off the records, the Tribunal on application made by any of the aforesaid parties within a period of 5 years from the publication in Official Gazette under Section 75, may restore the name of the LLP in the register of LLPs.</li> </ul>

### Highlights on amendments in Limited Liability Partnership Rules, 2009 called as the Limited Liability Partnership (Second Amendment) Rules 2022

*Notification dated March 04, 2022*

In this era of information technology, Ministry of Corporate Affairs (MCA) has taken various innovative steps towards ease of doing business. In continuation of introducing such innovative steps, MCA has undertaken MCA V3 initiative in respect of LLP related compliances and brought in major changes in Limited Liability Partnership Rules, 2009 ("LLP Rules") which are enumerated as follows:

Sr. No.	Current Provisions	Proposed Amendments	Remarks
1	Maximum <b>two</b> Director Identification Numbers (DINs) can be obtained at the time of incorporation.	Maximum <b>five</b> DINs can be obtained at the time of incorporation.	Greater Flexibility. More number of designated partners can apply for DIN at the time of forming an LLP.
2	Permanent Account Number (PAN) and Tax Deduction Account Number (TAN) are required to be obtained separately.	PAN and TAN applied in Form FiLLiP at the time of incorporating LLP.	Ease of incorporation process with the provision to apply for both PAN and TAN at the time of LLP's incorporation.
3	Application in <b>Form 23</b> shall be accompanied by: <ul style="list-style-type: none"> <li>An authority proof of person making application;</li> <li>copy of the incorporation / registration certificate of the LLP / company certificate of the entity .</li> </ul>	No authority proof of person making application is required to be attached with such application.	<b>Form 23</b> is for change in LLP's name in case the name of such LLP is similar to or too nearly resembles with the name of already registered LLP or body corporate or any other entity.  Additional documentation has been done away with so as to avoid redundancy.
4	<b>Form 8</b> ( <i>Statement of Account and Solvency</i> ) shall be signed by designated partners.	In case Corporate Insolvency Resolution Process or liquidation process has been initiated, it may be signed by interim resolution professional / resolution professional / liquidator / LLP administrator.	Under Insolvency Process / liquidation process, the entire affairs of the LLP vests with insolvency professional / liquidator / administrator and therefore authority to sign Statement of Account and Solvency is given to such persons.  Additional documentation from DPs for cases of liquidation has been done away with to reduce paperwork in cases where an IRP / IP/ liquidator has been already appointed.

Sr. No.	Current Provisions	Proposed Amendments	Remarks
5	<b>Form 11 (Annual Return)</b> of LLP having turnover up to Rs. 5 crore or contribution up to Rs. 50 lakhs shall be certified by Designated Partner.	In case Corporate Insolvency Process or liquidation process has been initiated, <b>Form 11</b> may be certified by interim resolution professional/ resolution professional / liquidator / LLP administrator.	No additional certification by designated partner shall be required where Form 11 is signed by interim resolution professional / resolution professional / liquidator / LLP administrator.  This is to smoothen the process of liquidation and avoid multiple certifications.
6	Foreign LLP to file <b>Form 29</b> for any alteration / change in: <ul style="list-style-type: none"> <li>incorporation / registration certificate of LLP incorporated or registered outside India;</li> <li>name / address of any of the persons authorized services on behalf of Foreign LLP in India or</li> <li>principal place of business of Foreign LLP in India.</li> </ul>	Foreign LLP is required to submit <b>Form 28</b> instead of Form 29 to intimate alteration / change in any of the matters as mentioned.	To avoid multiple reporting of relevant matters pertaining Foreign LLP, Form 29 is clubbed with Form 28.  This has again been done with the view of reduce paperwork and additional documentation.
7	Furnishing of further information or rectification of defects or incompleteness in or resubmission of any application or e-Form or document shall be made within period not exceeding 30 days in aggregate.	Furnishing of further information or rectification of defects or incompleteness in or resubmission of any application or e-Form or document shall be made in <b>Form 32</b> within period not exceeding 30 days in aggregate.	New Form is web based so as to enable stakeholders for rectifying defects / incompleteness or resubmission of application / e-Form / document.  This has been introduced with the view to make ease of doing business.

Sr. No.	Current Provisions	Proposed Amendments	Remarks
8	<b>Form 24</b> ( <i>Application for striking off the name of the LLP</i> ) shall be accompanied with certified copy of Statement of accounts showing nil assets and nil liabilities.	Statement of accounts showing nil assets and nil liabilities to be furnished in Form 24.	As Form 24 is going to be a web-based form, there is no need to attach a separate certified copy of statement of accounts showing nil assets and nil liabilities.
9	E-Form <b>FiLLiP</b> with required attachments needs to be filed for incorporation of LLP.	<b>FiLLiP</b> will now be a web-based form wherein details of latitude and longitude of registered office of proposed LLP is also required to be mentioned.	Web-based incorporation process for LLP being introduced to create more ease of doing business.
10	<b>Form 3</b> ( <i>intimation with regard of LLP Agreement and Changes made therein</i> ) contains only few details pertaining to change in LLP agreement.  Original agreement and supplemental agreement shall be attached in the Form.	<b>Form 3</b> ( <i>intimation with regard of LLP Agreement and Changes made therein</i> ) shall contain number of previous amendments/changes in LLP agreement along each change in LLP agreement with precise information accompanied by amended agreement.	Introduction of greater transparency since the trial of amendments have to be attached along with explanatory statement.  With this change one can get the details of previous and current change in Form itself without going through LLP agreement.
11	No provision for specific Reporting of contingent liabilities, creation / modification / satisfaction of charge in <b>Form 8</b> ( <i>Statement of Accounts and Solvency</i> ).	Contingent liabilities including particulars of creation / modification / satisfaction of charge to be specifically reported in <b>Form 8</b> .	More financial disclosure norms for LLPs.  A detailed financial information along with details of charges in name of LLP will now be available to general public, subject to payment of prescribed fees.
12	<b>Form 9</b> ( <i>consent to act as a Designated Partner</i> ) is signed physically by proposed DP.	<b>Form 9</b> will be web form to be signed digitally by proposed DP.	Any person acting as DP is required to obtain digital signature.

Sr. No.	Current Provisions	Proposed Amendments	Remarks
13	No provision for disclosing of jurisdiction of police station for registered office of LLP and Details of penalties and compounding of offences, if any in <b>Form 11 (Annual Return)</b> .	Jurisdiction of police station for registered office of LLP and Details of penalties and compounding of offences, if any to be reported in <b>Form 11 (Annual Return)</b> .	Greater transparency and ease of doing business.
14	LLP related Forms are electronic form to be submitted after filling the same offline.	LLP related Forms will be web-based to be filled online after logging into account.	Web based form shall reduce paperwork and help in ease of doing business.

The aforesaid provisions have been made effective from **1<sup>st</sup> April 2022**.

This document is prepared exclusively for the benefit and use of the clients of K. C. Mehta & Co. This should not be used as a substitute for professional advice. Reasonable care has been taken for ensuring the accuracy and the authenticity of the contents of this alert. However, we do not take any responsibility for any error or omission contained therein on any account. It is recommended that the readers should take professional advice before acting on the same.

For further analysis and discussion, you may please reach out to us.

## Locations

### Ahmedabad

**Arpit Jain**

Level 11, Tower B,  
Ratnaakar Nine Square,  
Vastrapur,  
Ahmedabad - 380 015

Phone: +91 79 4910 2200  
[arpit.jain@kcmehta.com](mailto:arpit.jain@kcmehta.com)

Independent Member of

**B K R**  
INTERNATIONAL

### Bengaluru

**Payal Shah**

19/4, Between 7th & 8th Cross,  
Malleswaram,  
Bengaluru - 560 003

Phone: +91 80 2356 1880  
[payal.shah@kcmehta.com](mailto:payal.shah@kcmehta.com)

### Mumbai

**Vishal Doshi**

508, The Summit Business Bay,  
Nr. WEH Metro Station,  
Gundavali, Andheri East,  
Mumbai - 400069

Phone: +91 22 2612 5834  
[vishal.doshi@kcmehta.com](mailto:vishal.doshi@kcmehta.com)

### Vadodara

**Milin Mehta**

Meghdhanush,  
Race Course,  
Vadodara - 390 007

Phone: +91 265 2440400  
[milin.mehta@kcmehta.com](mailto:milin.mehta@kcmehta.com)