

**Difference between an Incorporation Document and a Limited Liability Partnership Agreement****Analysis:****Incorporation Document**

**Section 11** of the Limited Liability Partnership Act, 2008 (for short “**LLP Act**”) provides for Incorporation Document as follows:

*“(1) For a limited liability partnership to be incorporated,-*

*(a) two or more persons associated for carrying on a lawful business with a view to profit shall 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 ...; 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, ... 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”*

**Rule 11** of the Limited Liability Partnership Rules, 2009 (for short “**LLP Rules**”) provides that-

*“For the purposes of section 11, the incorporation document shall be filed in Form 2 with the Registrar having jurisdiction over the State in which the registered office of the limited liability partnership is to be situated alongwith the fee as provided in Annexure ‘A’.”*

**LLP Agreement**

**Section 2(o)** of the LLP Act defines LLP Agreement as-

*“limited liability partnership agreement” means any written agreement between the partners of the limited liability partnership or between the limited liability partnership and its partners which determines the mutual rights and duties of the partners and their rights and duties in relation to that limited liability partnership”*

**Section 23** of the LLP Act makes it clear that-

*“(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.*

...

*(2) 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”*

**Rule 21** of the LLP rules provide that-

*“(1) For the purposes of sub-section (2) of section 23, every limited liability partnership shall file information with regard to the limited liability partnership agreement in Form 3 with the Registrar within thirty days of the date of incorporation alongwith the fee as provided in Annexure ‘A’*

*Provided that any change made in the limited liability partnership agreement shall be filed in Form 3 within thirty days of such change alongwith the fee as provided in Annexure ‘A’.”*

On considering the above provisions contained in the LLP Act and LLP Rules we can make out that there certainly exists a difference between the Incorporation Document and LLP Agreement.

S. No	Incorporation Document	LLP Agreement
1	It is an informative document setting down the details of LLP, its Partners including designated partners along with their amount of contribution and consent for forming an LLP to carry on a lawful business with profit motive.	It is an agreement entered into parties that defines the mutual rights and duties of the partners and their rights and duties in relation to that LLP.
2	It shall be in a form as may be prescribed.	There is no format prescribed.
3	If a person makes false statement in the incorporation document then he will be penalized.	LLP Agreement contains a provision that in case of invalidity of any provision of the Agreement it shall not affect the continuing enforceability of the remaining provisions. There is no penalty on the partners for the same.

4	Filing of Incorporation Document is mandatory for incorporation of LLP.	It is not mandatory to file an LLP Agreement for incorporation of LLP. In case no agreement is entered into, the rights & duties as prescribed under Schedule I to the LLP Act shall be applicable.
5	Form 2 comprises the Incorporation Document and Subscriber's Statement.	Form 3 is to be filed which contains information with regard to LLP Agreement and the LLP Agreement is filed as an attachment along with the form.