

### Obligation to notify ROC for change in constitution under Limited Liability Act

When business partners are setting up a [Limited Liability Partnership](#) (for short “LLP”) they should ensure that there is a written Limited Liability Partnership Agreement (for short “LLP Agreement”) between them that covers, information about the members and their contributions to the capital of the business, how they share profits and losses, rules for taking money out of the business, an important list of things the members agree that they will and will not do and, crucially, what happens if a partner dies or wants to leave the business, how members can be expelled, and other critical issues, to avoid disputes and unfair claims in the limited liability partnership.

LLP Agreement has been defined under **Section 2(o)** of the Limited Liability Partnership Act (for short “LLP Act”) 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*”.

A Partner to Limited Liability Partnership (for short “the LLP”) has been defined under **Section 2(q)** of the LLP Act wherein it has been provided that “*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*”

Therefore, **Section 23(1)** of the LLP Act, makes it mandatory to file the LLP Agreement with the Government by providing that “*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*”.

After filing of the Incorporation Document as per Form 2 with the Registrar of Companies (for short “ROC”) and obtaining the Certificate of Incorporation, the LLP needs to file Form 3 (Information with regard to Limited Liability Partnership Agreement and changes, if any, made therein) with the ROC simultaneously within thirty (30) days from the date of receipt of Certificate of Incorporation.

As per **Section 23(4)** of the LLP Act, “*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*”. Therefore, in case any LLP proposes to exclude provisions/requirements of First Schedule to the Act, it would have to enter into an LLP Agreement, specifically excluding applicability of any or all paragraphs of the First Schedule.

The basic contents of the LLP Agreement are:

- Name of LLP
- Name of Partners & Designated Partners
- Form of contribution
- Profit Sharing ratio
- Rights & Duties of Partners
- Proposed Business Rules for governing the LLP

LLP is required to get the LLP Agreement duly printed on Stamp Paper as per the State Stamp Act and signed by each Designated Partner with the signatures of two witnesses.

While filing Form 3 which contains information that is to be obtained from the LLP Agreement, the LLP shall attach Initial LLP Agreement as well as Supplementary LLP Agreement containing changes along with the said Form. Therefore, the contents of the LLP Agreement and Form 3 may match, but both are considered to be separate.

As per **Section 23(2)** of the LLP Act, *“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.”*

**Section 25** of the LLP Act provides for Registration of changes in partners. Sub-Section (2) to the said section specifically provides that any addition or deletion of a partner shall be informed to the ROC. It states that:

*“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”*

**Rule 22** of the Limited Liability Partnership Rules, 2009 provides that:

*“(2) For the purposes of sub-section (2) of section 25, where a person becomes or ceases to be a partner or where there is any change in the name or address of a partner, the limited liability partnership shall file with the Registrar, a notice in Form 4.*

*[\(3\)](#) For the purposes of sub-section (3) of section 25, in respect of notice of a person becoming a partner, the Form 4 shall include a statement signed by the incoming partner that he consents to become a partner.”*

Therefore, in view of the above provision it is mandatory to notify the ROC of any changes taking place in the constitution of the LLP.