

# Callidus News

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## LIMITED LIABILITY PARTNERSHIP ACT – KEY CHANGES



To begin with – What exactly is a Limited Liability Partnership [LLP]? It is a form of business where an LLP is treated as a separate legal entity and is liable to the full extent of its assets but the liability of the partners is limited to their agreed contribution in the LLP. The LLP can continue its existence irrespective of changes in partners and has all the features of a body corporate.

The Limited Liability Partnership Act was enacted by the parliament on 12th December 2008, on July 20th 2021 The Limited Liability Partnership (Amendment) Bill 2021 was introduced in the Rajya Sabha and was passed by the Upper-House on August 04th 2021 and was passed by the Lok-Sabha on August

09, 2021. This Act brought in several key changes regarding the punishment of offences, appeals and certain procedural requirements. The objective behind introducing these amendments was to facilitate ease of doing business, to encourage start-ups, to promote the conversion of Partnership firms into LLP's and to decriminalise certain offences where no malafide intention is involved. We shall now discuss some of these key features.

### Key Features of The Limited Liability Partnership (Amendment) Bill 2021

#### Introduction of a Small LLP

**SMALL LLP** – A Small LLP has been defined as an LLP, the contribution of which does not exceed Rs25,00,000 [Rupees Twenty-Five Lakh] and not exceeding Rs5,00,00,000 [Rupees Five Crore] in the immediately preceding year and its turnover for that year does not exceed Rs40,00,000 [Rupees Forty Lakhs] or such higher amount, not exceeding Rs50,00,000 [Rupees Crore].

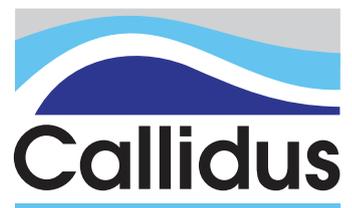
**RESIDENT OF INDIA** – As per the explanation in Section 7(1) the meaning of Resident of India for the purpose of Designated Partner is a person who has stayed in India for a period of not less than Twenty days [20] during the financial year. Hence in effect a person who is resident in India for



**THOUGHT  
for  
the MONTH**

DON'T WAIT FOR YOUR TURN.  
BET ON YOURSELF AND HAVE  
THE CONFIDENCE TO STAND UP  
AND SAY, "MY TIME IS NOW

**ROBERT F. SMITH**  
BUSINESSMAN



just 20 days in financial year can be appointed as designated partner.

**CHANGE OF NAME OF LIMITED LIABILITY PARTNERSHIP** – The Act initially stated that the Central Government may direct an LLP to change its name on certain grounds, such as the name being undesirable or identical to a trademark pending registration and failing to comply with such direction was punishable with a fine ranging from Rs 10,000 to Rs 5,00,000. The amended act removes some of these grounds and empowers the Central Government to allot a new name to such an LLP instead of levying a fine.

**ESTABLISHMENT OF REGISTRATION OFFICES** – The amendments empower the Central Government to establish Registration Offices for the sole purpose of registration of LLPs and to appoint Registrars and other Officers for discharging the functions under the Act.

**ADJUDICATING OFFICERS** – The Central Government is now empowered to appoint Adjudicating Officers for awarding penalties under the Act; who are Central Government Officers not below the rank of Registrar. Appeals against orders of the Adjudicating Officers will lie with the Regional Director

**ESTABLISHMENT OF A SPECIAL COURT** – This is a newly introduced section wherein the Central Government may, for the purpose of providing speedy trial of offences under the Act, by notification, establish or designate as many Special Courts etc. The special court shall consist of a Sessions Judge or an Additional Sessions Judge, for offences punishable with imprisonment of three years or more and a Metropolitan Magistrate or a Judicial Magistrate, for other offences. These Judges will be appointed by the Central Government in consultation with the Chief Justice of the High Court. The Appellate Jurisdiction herein has been vested with the High Courts.

**POWERS OF THE SPECIAL COURT** – As per the new sub sections only

the Special Courts will have the jurisdiction to take cognizance of any offence punishable under the Act. The Special Court has been vested with the power to try certain offences in a summary manner. However, in case of any conviction under a summary trial, a sentence of imprisonment for more than one year cannot be passed. Also, a summary trial can be conducted only for those offences wherein the term of imprisonment is less than 3 years.

**APPEAL AND REVISION** – In keeping with the new sections and sub sections the High Court is given authority to exercise, so far as may be applicable, all the powers conferred by Chapters XXIX and XXX of the Code of Criminal Procedure, 1973 on a High Court, as if a Special Court within the local limits of the jurisdiction of the High Court were a Court of Sessions trying cases within the local limits of the jurisdiction of the High Court.

**JURISDICTION OF TRIBUNAL AND APPELLATE TRIBUNAL** – Under the Act, appeals against orders of the NCLT lie with the National Company Law Appellate Tribunal. The amendment stipulates that Appeals cannot be made against any orders that have been passed with the consent of the parties. Furthermore, Appeals must be filed within sixty days (extendable by another sixty days) of the order.

**GENERAL PENALTIES** – If a limited liability partnership or any partner or any designated partner or any other person contravenes any of the provisions of the Act or the rules made thereunder, they shall be liable to a penalty of five thousand rupees and in case of a continuing contravention with a further penalty of Rs 100 for each day after the first during which such contravention continues, subject to a maximum of Rs 1,00,000.

**COMPOUNDING OF OFFENCES** – Initially under the Act, the Central Government was empowered to compound any offence which was punishable only with a fine. The amendment provides that, a Regional Director [or any officer above his rank], appointed by the

Central Government may compound such offences. The Application for compounding an offence has to be made to the Registrar, who after a prima facie examination, would forward the same to the Regional Director. If an offence by an LLP or its partners was compounded by the appropriate authority, then a similar offence cannot be compounded by the appropriate authority within a three-year period; thereby deterring the LLP or its partners from committing the same offences.

**DECRIMINALISATION OF CERTAIN OFFENCES** – The Act specifies the manner of operations of LLPs, and the violation of the following requirements was punishable with a fine ranging between Rs 2,000 and Rs 5,00,000. These requirements include disclosure regarding changes in partners of the LLP, change of registered offices, the arrangement between an LLP and its creditors or partners, reconstruction or amalgamation of an LLP and filing of a statement of account, solvency, and annual return. The amendment act decriminalises these provisions.

**PUNISHMENT FOR FRAUD** – Formerly under the Act, if an LLP or its partners carry out an activity to defraud their creditors, or for any other fraudulent purpose, every person party to it was punished with imprisonment of up to two years and a fine between Rs 50,000 and Rs 5,00,000. The amendment increases the maximum term of imprisonment from two years to five years.

**NON-COMPLIANCE OF ORDERS OF NCLT** – Under the old Act, non-compliance with an order of the National Company Law Tribunal (NCLT) was punishable with imprisonment up to six months and a fine up to Rs 50,000. The amendment removes this offence.

**Implications of these changes**  
The idea behind the introduction of Small LLPs was to create a class of LLPs that are subject to fewer compliance requirements and lower fees, in order to mitigate compliance costs. This in turn would lead to continuity of business and ensure

hassle-free incorporation of start-ups. It is a rather welcome change to have a designated official who oversees the compounding of offences which will also help in expediting the judicial process. By disallowing parties

to appeal against orders based on mutual consent will reduce frivolous litigation; however, this might become a stumbling block and obstruction to justice, as the parties may allege that their consent was not free and hence

open doors to fresh litigation. Only, time will tell whether the amendments are able to justify their objectives and create an environment for positive business growth for Small LLPs.



# IMO to designate May 18 as “International Day for Women in Maritime”

The Maritime Industry has always been a male dominated industry with least number of female work force. As per the recent BIMCO/ICS 2021 seafarer report, women represent only 1.2% percent of the global seafarer workforce. The IMO believes that, the more representation of women in any field has resulted in great progress and they have also quoted that “....equality for women means progress for all....”

The IMO’s Gender program was first introduced in 1988, at that time only few institutions around the world provided opportunities to the female candidate, however it took almost three decade for the institution to establish an International day for women in Maritime, the said proposal was first addressed by IMO Technical Cooperation committee in September

2021. With historically male dominated industry, IMO has been making efforts to support women to achieve their representation, to make sure with keeping 21st Century expectation.

It is also being understood that, within the framework of maritime development, and through its Women in Maritime program, under the slogan: “Training-Visibility-Recognition”, IMO has taken a strategic approach towards enhancing the contribution of women as key maritime stakeholders. The maritime organization has so far supported the participation of women in both shore-based and sea-going posts.

The IMO Council meeting held between 8th to 12th of November 2021 had decided to establish an international day for women in Maritime and the IMO designated

May 18th as the International day for women in Maritime. The said resolution passed by the IMO will celebrate women in the industry and is intended to promote the recruitment, retention and sustained employment of women in the maritime sector, raise the profile of women in maritime, strengthen IMO’s commitment to the United Nations Sustainable Development Goal (gender equality) and support work to address the current gender imbalance in maritime.

The present move by the IMO is welcomed by the International community, The orthodox view on male dominating the maritime sector is shifting gear and this will move will encourage more female candidates to enroll in Maritime related activity both on shore and off shore.

 **HOT NEWS**

## SCMA'S EXPEDITED ARBITRATION RULES FOR ALL ARBITRATIONS FROM 1st JANUARY 2022 AT THE OPTION OF PARTIES

On December 01, 2021 the Singapore Chamber of Maritime Arbitration (SCMA) launched its fourth set of Rules with the changes to allow for electronic documentation and a higher threshold for expedited arbitrations. The new Rules shall apply to all the Arbitrations commencing under SCMA, from January, 1st, 2022 and tries to adopt electronic documents and accommodate remote hearings. Following are the few key changes that are included in the new edition of Rules.

**INCREASE IN CLAIM LIMIT:** The expedited Rules now applies to any dispute where the claim amount or the counter claim, if any, is no more than USD 300,000/- wherein the earlier threshold was only USD 150,000/-.

**DOCUMENTS/HEARINGS:** The parties can now submit the documents electronically. The Rules now expressly provide that any notice or communication shall also be deemed effectively serves if sent to the recipient's designated electronic mailing address, with proof



of delivery. The case hearing and the case management conferences can be conducted by Video Conference. An Award may also be signed electronically to make it valid.

**ARBITRAL PROCEEDINGS:** Two Arbitrators may now conduct the Arbitration, and the third Arbitrator need not be appointed unless there is a substantive hearing or lack of Agreement between the two

Arbitrators. Further, unless otherwise the Parties agrees or the Tribunal directs, the Arbitration proceedings will be deemed closed three months from the date of any final written submission or hearing, by issuing an Award. Any Change of Arbitrators appointed by the Parties shall be subject to the approval of the Tribunal.

Courtesy: [www.scma.org.sg](http://www.scma.org.sg)



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