



# Rajput Jain & Associates

**Chartered Accountants**

**An ISO 9001:2008 Certified Firm**

## ABOUT RAJPUT JAIN & ASSOCIATES

Rajput Jain & Associates is a Chartered Accountants firm, with its headquarter situated at New Delhi (the capital of India). The firm has been set up by a group of young, enthusiastic, highly skilled and motivated professionals who have taken experience from top consulting firms and are extensively experienced in their chosen fields has providing a wide array of Accounting, Auditing, Taxation, Assurance and Business advisory services to various clients and their stakeholders.

Focus at providing tailor made solutions to challenging problems of our clients, and perform with high quality and timely service.

Rajput Jain & Associates, a professional firm, offers its clients a full range of services, to serve better and to bring bucket of services under one roof, the firm has merged with it various Chartered Accountancy firms pioneer in diversified fields

Our main office is located at Delhi. Incidentally, Delhi is the Capital of India. Our other offices are in Mankapur & Moradabad (U.P.). We have associates all over India in big cities. All our offices are well equipped with latest technological support with updated reference materials. We have a large team of professionals other than our Core Team members to meet the requirements of our prospective clients including the existing ones. However, considering our commitment towards high quality services to our clients, our team keeps on growing with more and more associates having strong professional background with good exposure in the related areas of responsibility. Further to meet the growing demands of the fiercely competitive market we are constantly looking forward for team of associates comprising of highly skilled professionals to cater the needs ever increasing clientele.

# STRIKING OFF THE LLP: EASY EXIT SCHEME FOR LLP

## INTRODUCTION

To promote business in India, we need to promote ease of doing business in India, and ease of doing business does not only involve easy of incorporation of the Company and LLP but also to provide an easy exit option to the Company and LLP who failed to carry on their business without forcing them to spend a huge amount for such exit option.

Our government is in a constant endeavor to promote ease of doing business in India came up with the easy exit option both for the Companies under the Companies Act, 2013 and LLP Act, 2008 for the LLPs. However, in this write-up my study will be limited to the LLP Act, 2008 and Rules made thereunder.

## LEGAL BACKGROUND

Section 75 of the LLP Act, 2008 provides the power to the registrar to strike-off the defunct LLPs, for the reference I am producing the provision of Section 75;

“Where the Registrar has reasonable cause to believe that a limited liability partnership is not carrying on business or its operation, in accordance with the provisions of this Act, the name of limited liability partnership may be struck off the register of limited liability partnerships in such manner as may be prescribed:

Provided that the Registrar shall, before striking off the name of any limited liability partnership under this section, give such limited liability partnership a reasonable opportunity of being heard.”

On a plain reading of the provision, it is clear that provision only provides power to Registrar to strike-off those LLPs who are not carrying business as per the provisions of the Act, subject to the condition that before striking off the name of the LLP reasonable opportunity of being heard must be given to such LLP.

Further, it is provided that the procedural aspect will be governed by the rules made under the LLP Act, 2008. Rule 37 of the LLP Rules, 2009 governs the procedural aspect. For easy understanding, I will be producing the text of Rule 37 wherever required.

“37(1) Where a limited liability partnership is not carrying on any business or operation –  
(a) for a period of two years or more and the Registrar has reasonable cause to believe the same, for the purpose of taking suo motu action for striking off the name of the LLP; or  
(b) for a period of one year or more and has made an application in Form 24 to the Registrar, with the consent of all partners of the limited liability partnership for striking off its name from the register,

the Registrar shall send a notice to the limited liability partnership and all its partners, of his intention to strike off the name of the limited liability partnership from the register and requesting them to send their representations along with copies of the relevant documents, if any, within a period of one month from the date of the notice:

Provided that no such notice by Registrar shall be required under clause (b):

Provided further that where the limited liability partnership is regulated under a special law, the application for removal of its name shall be 38 accompanied by approval of the regulatory body constituted or established under that law.”

Before moving further, let us understand sub-rule (1), Only those LLPs who are not carrying any business for the specified duration can be the strike off by the Registrar in the following manner;

Ø **Suo-motu:** In case LLP is not carrying on any of business from last two years or more then Registrar can strike off such LLP. However, before striking off such LLP, the Registrar shall send notice of his intention to strike off such LLP to its partner. Partner to give their representation within one month of such notice.

Ø **Voluntary Strike-off:** Registrar may if LLP not in operation for one year or more and make an application to the Registrar in e-Form 24 along with the consent of all the partners can strike off the company subject to the fulfilment of other conditions. However, if LLP is governed by any special law then before making the application to Registrar, the approval of the body constituted under such special law will be required. For example, LLP registered with SEBI as sub-broker will be required SEBI approval before filing e-Form 24 and such approval will be attached with e-Form 24.

Notice sent to Partner in case of suo-motu strike-off shall also be placed on the website of the MCA for the period of 1 month for the general information of the public.

Unless the contrary is shown, after such time as may be mentioned in the notice issued under sub-rule 1 or within one month from the notice issued under sub-rule 2 (Placing on the website of the MCA), the Registrar may by order strike off the name of the LLP and order also to be published in the Official Gazette.

In case LLP having Assets and Liabilities then Registrar before making order of strike-off LLP, shall ensure the following things;

1. Provision has been made for the realization of the amount due to the LLP
2. Discharge of payment of the obligation of the LLP.

In case of voluntary strike-off, Registrar may take an undertaking from the Designated Partner of Partner in this behalf.

Notwithstanding the undertaking given by the Designated Partners or Partners, assets of the LLP shall continue to be available for the discharging any liabilities that may arise in future even after strike off of the name of LLP.

The liability of the Partners will continue to exist even after strike off as if the LLP has never been strike off.

NCLT may wind-up the LLP already strike off.

## **PROCEDURE FOR STRIKE OFF OF LLP**

Before moving further with the filing of e-Form 24, all the remaining compliances up to the date the LLP is in operation need to be complied. This includes;

1. Statement of Solvency (Annual Accounts) filed in e-form 8.

a. Annual Account need to be Audited by CA. Except in the following case:- Turnover does not exceed in any financial year by 40,00,000 (Forty Lakhs Rupees) and contribution does not exceed 25,00,000 (Twenty Five Lakhs Rupees)

b. Such statement of solvency shall have all the disclosures required under MSME Regulation Act, 2006 i.e. Total Amount Pending to MSME Vendor, Number of days from which it is pending and in case such pendency is of more than 45 days then the interest charged on such dues.

c. Charge detail also to be provided in case of any creation, modification or satisfaction of the charge.

2. Annual Return to be filed in e-Form 11.

d. Compliance Certificate of Company Secretary, except in the case of LLP having turnover of up to 5,00,00,000 (Five Cr.) or contribution up to 50,00,000 (Fifty Lakhs Rs.), in this case, a certificate from designated partner sufficient.

e. Attach detail of designated partner, with detail about their directorship and Partner/Designated Partner.

3. Filing of up to date Income Tax Return.

**NOTE: In case the company has not commenced any business then no need to do any above compliance. However, an affidavit signed by designated partner specifying LLP has not commenced any business will be attached with the e-Form 24 along with other attachments.**

Once we complete all the pending compliances, then first Management of the concerned LLP will pass the resolution for making an application to the Registrar for striking off of LLP and authorize one Designated Partner as an authorized person to make such application to the Registrar. LLP will file such application in e-Form 24 along with following documents as attachment. Authority letter to make an application in favour of anyone designated partner.

1. Authority letter to make an application in favour of anyone designated partner.
2. Detail application requesting, ROC to struck-off the LLP's name.
3. Statement of Account disclosing NIL asset and Liabilities duly certified by CA, not earlier than 30 days from date of filing of e-Form 24.
4. Affidavit signed by all the designated partner jointly on stamp paper of Rs. 10 (For Delhi)
  - a. LLP has not commenced business or where it has commenced business date of cessation of business.
  - b. LLP does not have any liability and indemnifying in case any liability arises in future.
  - c. That LLP has not opened any Bank Account or where it has opened bank account then such bank account has been closed and certificate from the Bank of the same effect.
  - d. LLP has not filed any ITR since it has not commenced business or copy of the acknowledgement of the latest ITR.
5. Copy of LLP Agreement.
6. Affidavit that no proceeding is pending under any law.

# Contact Us

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## Branch Offices



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