

# The limited liability partnerships Act Muskan Shasna 2008

## # differences with other forms of organisation

| Basis                   | LLP   | Partnership firm.   |
|-------------------------|---|---|
| ① regulating act        | The limited liability partnership act 2008.   | The Indian partnership act 1932.  |
| ② Body corporate        | It is a body corporate.   | It is not a body corporate.   |
| ③ Separate legal entity | It is a legal entity separate from its members.   | It is not a body corporate.   |
| ④ Perpetual succession  | death, retirement, insolvency of the partners does not affect its existence of LLP.                 | death, retirement, etc may affect its existence. It has no perpetual succession.  |
| ⑤ Registration          | Registration is mandatory.  | registration is Voluntary.  |
| ⑥ Liability             | liability of each partner is limited.   | liability of each partner is unlimited.   |
| ⑦ Designated Partners   | At least <u>two</u> designated partners and at least <u>one</u> of them shall be resident of India. | There is no provision for such partners under the Partnership act 1932.           |
| ⑧ Common seal           | It may have its common seal as its official signature.  | there is no such concept in Partnership.  |
| ⑨ Foreign Partnership   | Foreign nationals can become a partner in LLP.  | foreign nationals cannot become a partner in partnership firm.                    |
| ⑩ Minor as Partner      | Minor cannot be admitted to the benefit of LLP.   | Minor can be admitted as beneficiary partner.                                     |
| ⑪ name                  | name of LLP to contain the word (LLP) as suffix.  | no guidelines. the partners can have any name as per their choice.                |
| ⑫ legal compliances     | only designated partners are responsible for all compliances and penalties under this act.          | all partners are responsible for all the compliances and penalties under the act. |

| Basis   | LLP  | Company   |
|---|--|---|
| ① regulating act  | The LLP act 2008   | the companies act 2013  |
| ② Members/<br>Partners                                  | The person who contribute to LLP are known as partner of LLP.                                      | the person who invest the money in the shares are known as members of company.              |
| ③ Internal<br>governance<br>structure                   | the internal governance structure of a LLP is governed by contract agreement between the partners. | the internal governance structure of a company is regulated by statute.                     |
| ④ name  | name of LLP to contain the word LLP or suffix.   | name of public company to contain word Ltd & Pvt to contain the word private Ltd as suffix. |
| ⑤ no. of members  | maximum - 2 members, maximum no such limit on the members in the act.                              | minimum 2, max 200 in Pvt comp.<br>minimum - 7, max - no such limit in public company.      |
| ⑥ liability of<br>members/<br>Partners                  | liability of partners is limited to the extent of agreed contribution in case of intention fraud.  | liability is limited.   |
| ⑦ Management  | The business of the company managed by the partners authorised in agreement.                       | the affairs of the company are managed by board of directors elected by the shareholders.   |
| ⑧ Minimum no.<br>of director/<br>designated<br>Partners | Minimum <sup>2</sup> designated Partners.  | Pvt Co - 2 directors<br>Public Co. - 3 directors  |

Process of incorporation of company + clause of MOA = Incorporation of LP

## # Incorporation of LP :-

- ① LP should be legally constituted
- ② There should be 2 partners designated partner for incorporation of the LP.
- ③ LP shall file the document which are required for the incorporation that are also called as constitutional documents.
- ④ All documents shall be verified by CA/CS/CMA.
- ⑤ The designated partner shall give affidavit that whatever information they have given is true information and have not gives any false information.
- ⑥ This document shall be filed with the ROC and LP can be incorporate accordingly:
- ⑦ LP's incorporation shall have following terms.
  - Ⓐ name clause
  - Ⓑ object clause
  - Ⓒ register office
  - Ⓓ capital which is contributed by partners.
  - Ⓔ partners & designated partner's details.
  - Ⓕ the liability of LP of each of the partners.
- ⑧ after filing all this documents ROC will incorporate a LP and give the certificate of incorporation under official seal of ROC.
- ⑨ All the official ~~announcement~~ <sup>communication</sup> shall be made at registrar office of LP by registered post.

(10) LP can change its registered office by notice to ROC upon the filing.

(11) Increase of contribution penalty is 2000 to 25000.

## # Name of LLP

(i) the name shall not be identical or similar.

(ii) the name shall not be offensive or undesirable

(iii) ROC will reserve option should be given for the name to ROC

(iv) ROC will reserve name for 3 months.

(v) Incorporate a company within 3 months.

## # Registration of change in partners (section 25)

### # characteristics of LLP.

(1) Mutual agency :- means all the partners are bound by the act of any of the single partner but for unauthorised acts which mean every partner is agent of LLP.

(2) LLP agreement :- agreement decides the mutual rights of the partners and decides the conditions as well as to avoid the disputes.

(3) Business for profit only :- It is the character of partnership firm adopted by LLP - that business will be done only for profit.

(4) Perpetual succession :- death, retirement, or insolvency of partner does not affect existence of LLP. It is capable of entering into contracts and holding property in its own name.

5. LP is body corporate :- LP is a body, corporate formed and incorporated under this act and is legal entity, separate from that of its partners and shall have perpetual succession.
6. Separate legal entity - The separate legal entity is liable to the full extent of its assets but liability of partners is limited to their agreed contribution shall be creditors of LP alone.
7. Artificial person - a LP is a artificial person because it is created by a legal process and is clothed with all rights of an individual. It can do everything which any natural person can do, except of course that,
8. Common seal - a LP being an artificial person by law and act through its partners and designated partners. LP has a common seal.
9. Limited liability :- the liability of partners will be limited to their agreed contribution in the LP. Such contribution may be of tangible or intangible assets both.
10. Miscellaneous :-
- a. One LP can merge with another LP.
  - b. LP can convert into a company and company can also convert into LP.
  - c. LP also need to e-filing like that of the company with ministry of corporate affairs.
  - d. LP can also be formed in foreign and such a foreign LP can also become a partner of Indian LP.

## # Relationship of partners (Section-23)

- ①. The mutual right and duties of partners of a LLP and the mutual right and duties of a LLP and its partners, shall be governed by the LLP agreement between the partners, or b/w LLP and its partners.
- ②. If there is any change in LLP agreement it must be filed with the registrar in such a form and prescribed fees.
- ③. If an agreement in writing made before the incorporation of LLP b/w the persons who subscribed their names to the incorporation document may impose obligation on the LLP provided such agreement is ratified by all partners after the incorporation of the LLP.
- ④. In the absence of agreement, the mutual duties and rights of the partners and the mutual rights and duties of the LLP and the partners shall be determined by the provisions relating to that matter as are set out in first Schedule.

## # Cessation of Partnership interest [Section 24]

- ①. If a partner want to cease to be a partner of LLP. he can by giving a notice in writing of not less than 30 days to the other partners of his intention to resign a partner.
- ②. a person shall cease to be a partner of LLP if:-
  - (i). on his death or dissolution of LLP.
  - (ii). if he declared to become a unsound mind.
  - (iii). if he has applied to be adjudicated as an insolvent or declared as an insolvent.

③. Where a person has ceased to be a partner of a LLP, the former partner is to be regarded as still being a partner of the LLP unless

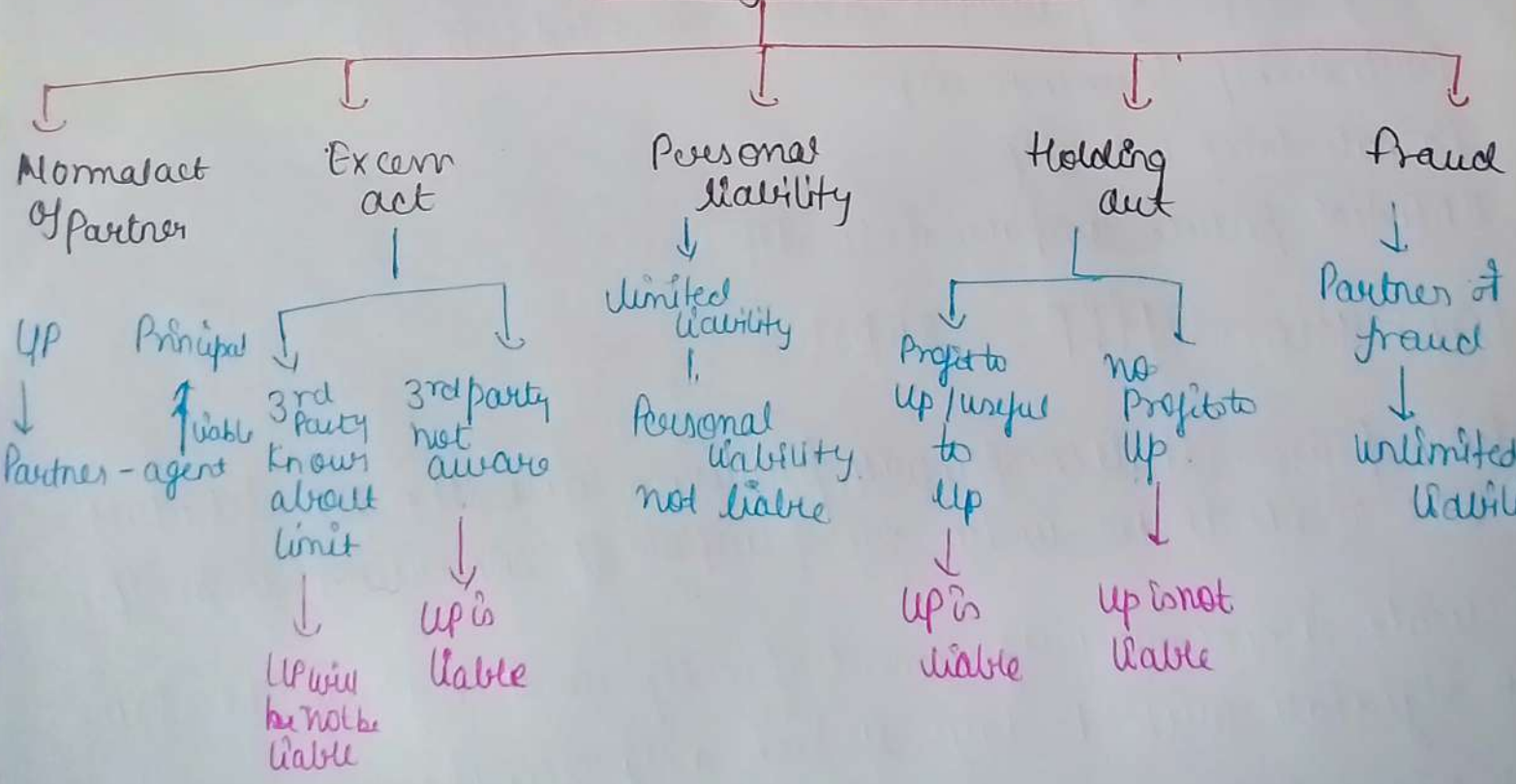
- (i) the person ~~has~~ has notice that the former partner has ceased to be a partner of LLP or.
- (ii) notice that the former partner has ceased to be a partner of the LLP has been delivered to the registrar.

④. The cessation of a partner from the LLP does not by itself discharge the partner from any obligation to the LLP or to the other partners or to any other person which he incurred while being a partner.

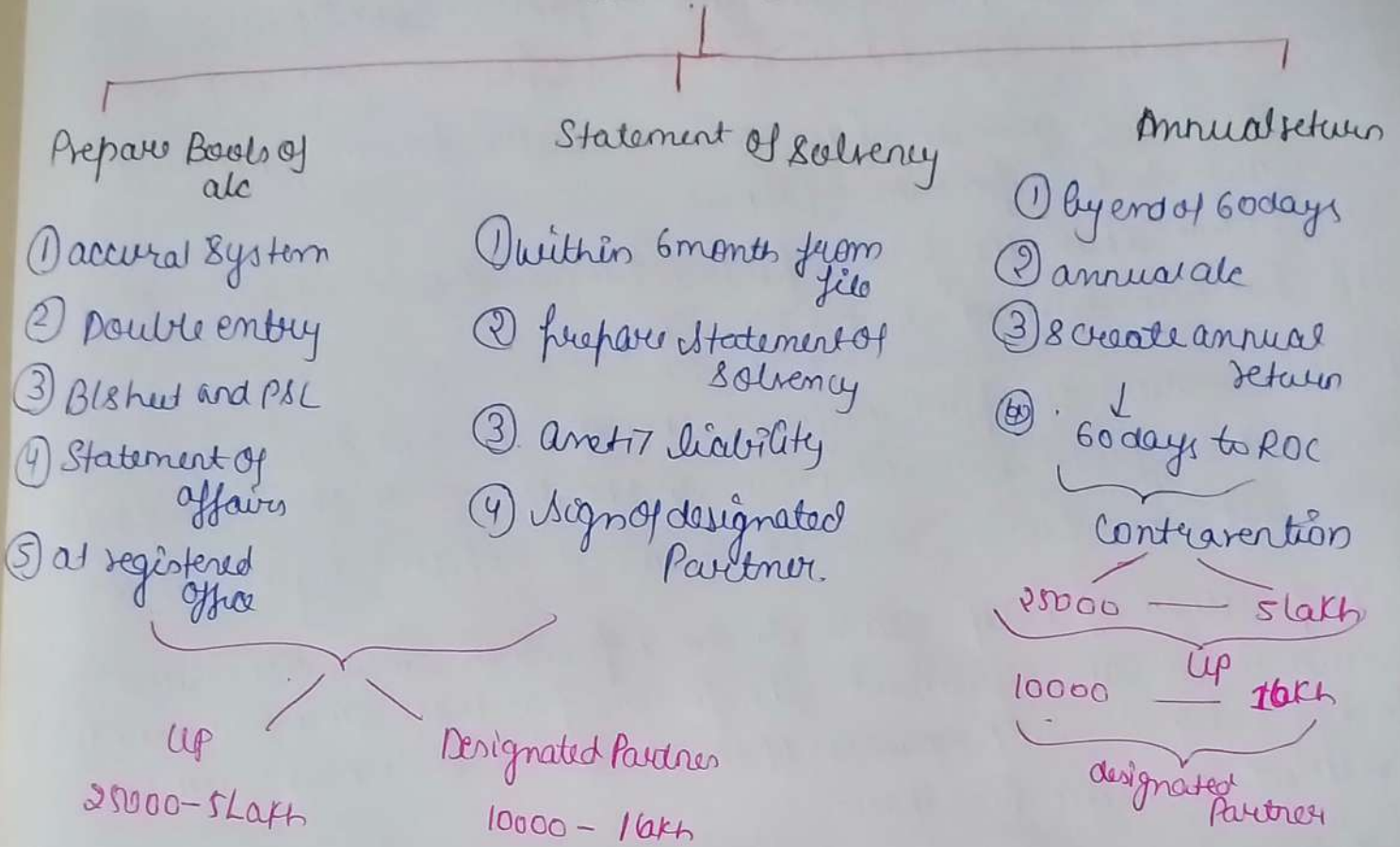
⑤. A partner of a LLP ceases to be a partner, unless otherwise provided in LLP agreement the former partner or a person entitled to his share in consequences of the death or insolvency will be entitled to receive his share.

⑥. A ceased partner shall not have any right to interfere in the management of the LLP.

Liability of Partner/LLP.



# financial disclosures



## # Conversion of UP into UP.

Following types of partners can get converted into UP.

- a) Partnership firm into UP
- b) Private comp into UP
- c) Unlisted public company into UP

## # Conversion of LLP :- (8 steps)

- 1) Above person shall comply with provision with the act schedule and rules made there under for purpose of conversion into LLP.
- 2) It creates a necessary agreement for LLP and registers the same with registrar with 15 days of such a agreement.
- 3) ROC will register above person as UP and issue certificate of registration.



④ above persons deemed to be converted into llp once Certificate of Conversion is issued.

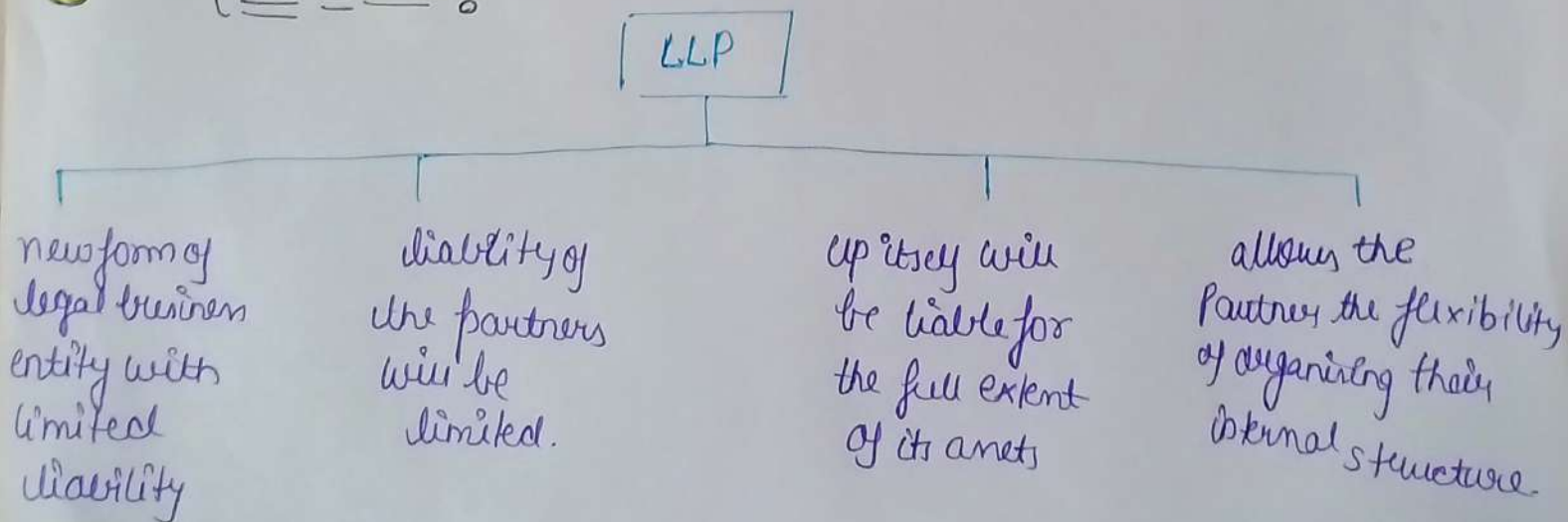
⑤ now such a new llp and its partners will be bound by the provisions of this act and all existing assets, contracts, liability of the above persons will be transferred in the name of llp and such a above person will dissolved.

## # Winding Up

The llp will wound up in the following cases:-

- ① NCLT passes the order of winding up.
- ② partners falls below minimum  $\geq$  and such a situation continue for 6 months.
- ③ llp is another unable to pay its debt.
- ④ llp act antinational against india.
- ⑤ llp does not files annual a/c, annual return, Statement of Solvency.

😊 What is LLP?



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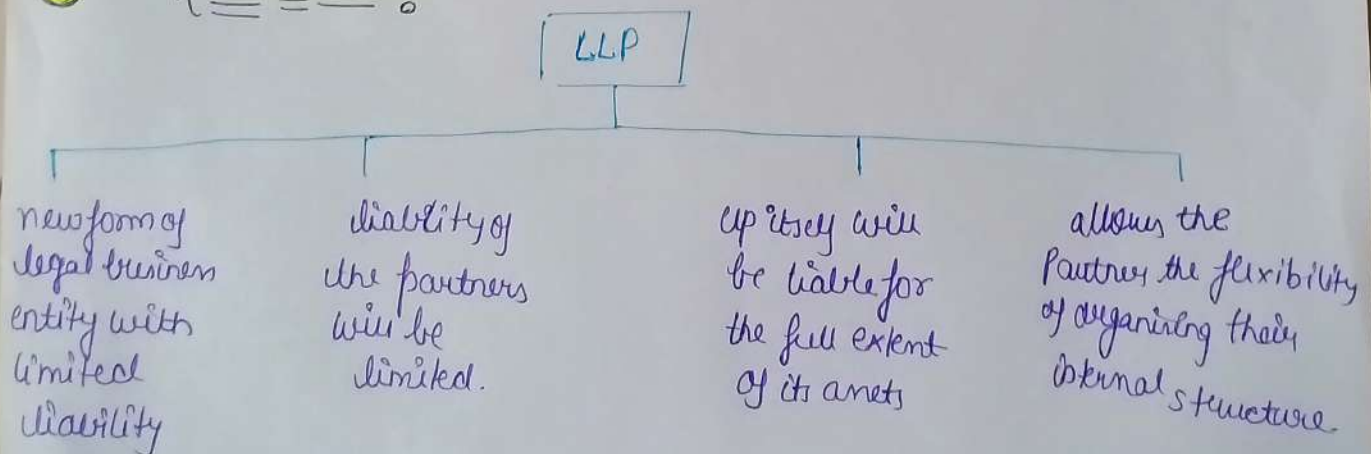
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## # Winding Up

The llp will wound up in the following cases:-

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- ② partners falls below minimum 2 and such a situation continue for 6 months.
- ③ llp is another unable to pay its debt.
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- ⑤ llp does not files annual a/c, annual return, Statement of Solvency.

😊 What is LLP?



## 4 Schedule of UP:-

- ① The first Schedule deals with - mutual rights and duties of partners, as well as up and its partners where there is absence of a formal agreement with respect to them.
- ② The Second Schedule deals with - Conversion of a firm into LLP.
- ③ The third Schedule deals with - Conversion of a private comp into LLP.
- ④ The fourth Schedule deals with - Conversion of public company into LLP.