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UNIT 3:
THE LIMITED LIABILITY PARTNERSHIP
ACT, 2008

3. The Limited Liability Partnership Act, 2008

INTRODUCTION:

- The Parliament passed the **Limited Liability Partnership Bill on 12th December, 2008** and the **President of India has assented the Bill on 7th January, 2009** and called as the **Limited Liability Partnership Act, 2008**, and **many of its sections got enforced from 31st March 2009**.
- This Act have been enacted to make provisions for the formation and regulation of Limited Liability Partnerships and for matters connected there with or incidental thereto.
- The LLP Act, 2008 has **81 sections and 4 schedules**.
- **The First Schedule** deals with mutual rights and duties of partners, as well limited liability partnership and its partners where there is absence of formal agreement with respect to them.
- **The Second Schedule** deals with conversion of a Firm into LLP.
- **The Third Schedule** deals with conversion of a private company into LLP.
- **The Fourth Schedule** deals with conversion of unlisted public company into LLP.
- **The Ministry of Corporate Affairs (MCA) and the Registrar of Companies (ROC)** are entrusted with the task of administrating the LLP Act, 2008.
- The Central Government has the authority to frame the Rules with regard to the LLP Act, 2008, and can amend them by notifications in the Official Gazette, from time to time.
- **The Indian Partnership Act, 1932 is not applicable to LLPs.**

NEED OF NEW FORM OF LIMITED LIABILITY PARTNERSHIP

- Limited Liability Partnership (LLP) is a new form of business entity that **enables professional expertise and entrepreneurial initiative to combine, organize and operate in an innovative and efficient manner**.
- For a long time, a need has been felt to provide for a business format that would combine the advantages of limited liability of a company and the flexibility of organizing their internal management on the basis of mutually arrived agreement, as is the case in a partnership firm, at a low compliance cost.
- Consequently the Limited Liability Partnership (LLP) concept was initiated as an alternative to the 'traditional partnership firm' on the one hand, where partners are exposed to unlimited personal liability, and 'incorporated company' on the other, which is burdened with statute based governance structure.
- This form of business organization permits individual partners to be insulated from joint liability of any partner's business decision. The LLP enters into a contract in its name and the liability of its partners is limited to their agreed contribution in the LLP.
- An LLP is thus a hybrid entity between a company and a partnership firm. The LLP Act incorporates all the flexibility available under the Partnership Act and all the beneficial aspects of the Companies Act.

MEANING AND CONCEPT

- Section 2(1)(n) of the LLP Act defines LLP as "**limited liability partnership means a partnership formed and registered under this Act.**"
- The above definition does not explain the substance of what constitutes a limited liability partnership. In the light of the nature of an LLP, as stated in Section 3, a comprehensive definition of an LLP giving its main essentials may be given as follows:
'A limited liability partnership is a body corporate, which is an artificial person, having a separate legal entity, with a perpetual succession, a common seal and carrying limited liability'

- A LLP is a new form of legal business entity with limited liability. It is an alternative corporate business vehicle that not only gives the benefits of limited liability at low compliance cost but allows its partners the flexibility of organising their internal structure as a traditional partnership.
- The LLP is a separate legal entity and, while the LLP itself will be liable for the full extent of its assets, the liability of the partners will be limited.
- **LLP is thus an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership.**
- Since LLP contains elements of both 'a corporate structure' as well as 'a partnership firm structure'. **LLP is called a hybrid between a company and a partnership.**

CHARACTERISTIC/SALIENT FEATURES OF LLP

1. **LLP is a body corporate:** Section 3 of LLP Act provides that a LLP is a body corporate formed and incorporated under this Act and is a legal entity separate from that of its partners. An LLP is formed by the registration of an incorporation document with the Registrar of Companies of the State in which the registered office of the LLP is to be situated. Incorporation by registration creates an LLP.
2. **Perpetual Succession:** The LLP can continue its existence irrespective of changes in partners. Death, insanity, retirement or insolvency of partners has no impact on the existence of LLP. **Partners may come and go but the LLP can go on forever.** An LLP may be compared with a flowing river where the water keeps on changing continuously still the identity of the river remains the same. Thus, an LLP has perpetual existence, irrespective of changes in its partners.
3. **Separate Legal Entity:** The LLP is a separate legal entity, is liable to the full extent of its assets but liability of the partners is limited to their agreed contribution in the LLP. In other words, creditors of LLP shall be the creditors of LLP alone. It is capable of entering into contracts and holding property in its own name. No partner can either individually or jointly claim any ownership rights in the assets of the LLP during its existence or in its winding up. It can sue and be sued in its own name by its partners as well as outsiders.
4. **Mutual Agency:** No partner is liable on account of the independent or un-authorized actions of other partners, thus individual partners are shielded from joint liability created by another partner's wrongful business decisions or misconduct. In other words, all partners will be the agents of the LLP alone. No one partner can bind the other partner by his acts.
5. **LLP Agreement:** Mutual rights and duties of the partners within a LLP are governed by an agreement between the partners. The LLP Act, 2008 provides flexibility to partner to devise the agreement as per their choice. In the absence of any such agreement, the mutual rights and duties shall be governed by the provisions of the LLP Act, 2008.
6. **Artificial Legal Person:** A LLP is an artificial legal 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, it cannot be sent to jail, cannot take an oath, cannot marry or get divorce nor can it practice a learned profession like CA or Medicine. A LLP is invisible, intangible, immortal (it can be dissolved by law alone) but not fictitious because it really exists.
7. **Common Seal:** A LLP being an artificial person can act through its partners and designated partners. LLP may have a common seal, if it decides to have one [Section 14(c)]. Thus, it is not mandatory for a LLP to have a common seal. It shall remain under the custody of some responsible official and it shall be affixed in the presence of at least 2 designated partners of the LLP.
8. **Limited Liability:** Every partner of a LLP is, for the purpose of the business of LLP, the agent of the LLP, but not of other partners (Section. 26). The liability of the partners will be limited to their agreed contribution in the LLP **except in case of unauthorized acts, fraud and negligence.** But a partner shall not be personally liable for the wrongful acts or omission of any other partner. An obligation of LLP, whether arising in contract or otherwise,

shall solely be the obligation of the LLP only [Sec. 27(3)]. The liabilities of the LLP shall be met out of the property of the LLP [Sec. 27(4)].

9. **Management of Business:** The partners in the LLP are entitled to manage the business of LLP. But only the designated partners are responsible for legal compliances.
10. **Minimum and Maximum number of Partners:** Every LLP shall have least two partners and shall also have at least 2 individuals as designated partners, of whom at least one shall be resident in India. There is no maximum limit on the partners in LLP.
11. **Business for Profit Only:** The essential requirement for forming LLP is carrying on a lawful business with a view to earn profit. Thus LLP cannot be formed for charitable or non-economic purpose.
12. **Investigation:** The Central Government shall have powers to investigate the affairs of an LLP by appointment of competence authority for the purpose.
13. **Compromise or Arrangement:** Any compromise or arrangement including merger and amalgamation of LLPs shall be in accordance with the provisions of the LLP Act, 2008.
14. **Conversion into LLP:** A firm, private company or an unlisted public company would be allowed to be converted into LLP in accordance with the provisions of LLP Act, 2008.
15. **E-Filing of Documents:** Every form or application of document required to be filed or delivered under the act and rules made thereunder, shall be filed in computer readable electronic form on its website www.mca.gov.in and authenticated by a partner or designated partner of LLP by the use of electronic or digital signature.
16. **Foreign LLPs:** Section 2(1)(m) defines foreign limited liability partnership "as a limited liability partnership formed, incorporated, or registered outside India which established a place of business within India". Foreign LLP can become a partner in an Indian LLP.

ADVANTAGES OF LLP FORM

- a) LLP is organized and operates on the basis of an agreement.
- b) It provides flexibility without imposing detailed legal and procedural requirements
- c) It enables professional/technical expertise and initiative to combine with financial risk taking capacity in an innovative and efficient manner.
- d) It is easy to form
- e) In LLP form, all partners enjoy limited liability
- f) Flexible capital structure is there in this form
- g) It is easy to dissolve

DIFFERENCES WITH OTHER FORMS OF ORGANISATION

Distinction between LLP and Partnership Firm: The points of distinction between a limited liability partnership and partnership firm are tabulated as follows:

| | 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 a group of persons with no separate legal entity. |
| 4. | Creation | It is created by a legal process called registration under the LLP Act, 2008. | It is created by an agreement between the partners. |
| 5. | Registration | Registration is mandatory. LLP can sue and be sued in its own name. | Registration is voluntary. Only the registered partnership firm can sue the third parties. |

| | | | |
|-----|----------------------------|--|--|
| 6. | Perpetual succession | The death, insanity, retirement or insolvency of the partner(s) does not affect its existence of LLP. Members may join or leave but its existence continues forever. | The death, insanity retirement or insolvency of the partner(s) may affect its existence. It has no perpetual succession. |
| 7. | Name | Name of the LLP to contain the word limited liability partners (LLP) as suffix. | No guidelines. The partners can have any name as per their choice. |
| 8. | Liability | Liability of each partner limited to the extent to agreed contribution except in case of willful fraud. | Liability of each partner is unlimited. It can be extended upto the personal assets of the partners. |
| 9. | Mutual agency | Each partner can bind the LLP by his own acts but not the other partners. | Each partner can bind the firm as well as other partners by his own acts. |
| 10. | Designated partners | At least two designated partners and atleast one of them shall be resident in India. | There is no provision for such partners under the Indian partnership Act, 1932. |
| 11. | Common seal | It may have its common seal as its official signatures. | There is no such concept in partnership |
| 12. | Legal compliances | Only designated partners are responsible for all the compliances and penalties under this Act. | All partners are responsible for all the compliances and penalties under the Act. |
| 13. | Annual filing of documents | LLP is required to file: (i) Annual statement of accounts (ii) Statement of solvency (iii) Annual return with the registration of LLP every year. | Partnership firm is not required to file any annual document with the registrar of firms. |
| 14. | Foreign partnership | Foreign nationals can become a partner in a LLP. | Foreign nationals cannot become a partner in a partnership firm. |
| 15. | Minor as partner | Minor cannot be admitted to the benefits of LLP. | Minor can be admitted to the benefits of the partnership with the prior consent of the existing partners. |

DISTINCTION BETWEEN LLP AND LIMITED LIABILITY COMPANY (LLC)

| | Basis | LLP | LLC |
|----|-------------------------------|---|---|
| 1. | Regulating Act | The LLP Act, 2008. | The Companies Act, 2013. |
| 2. | Members/Partners | The persons who contribute to LLP are known as partners of the LLP. | The persons who invest the money in the shares are known as members of the company. |
| 3. | Internal governance structure | The internal governance structure of a LLP is governed by agreement between the partners. | The internal governance structure of a company is regulated by statute (i.e., Companies Act, 2013). |
| 4. | Name | Name of the LLP to contain the word "Limited Liability partnership" or "LLP" as suffix. | Name of the public company to contain the word "limited" and Private company to contain the word "Private limited" as suffix. |

| | | | |
|----|---|---|--|
| 5. | Number of members/ partners | Minimum – 2 members Maximum – No such limit on the members in the Act. The members of the LLP can be individuals/or body corporate through the nominees | Private company: Minimum – 2 members Maximum – 200 members Public company: Minimum – 7 members Maximum – No such limit on the members. Members can be organizations, trusts, another business form or individuals. |
| 6. | Liability of members/partners | Liability of a partner is limited to the extent of agreed contribution except in case of willful fraud. | Liability of a member is limited to the amount unpaid on the shares held by them. |
| 7. | Management | The business of the company managed by the partners including the designated partners authorized in the agreement. | The affairs of the company are managed by board of directors elected by the shareholders. |
| 8. | Minimum number of directors/designated partners | Minimum 2 designated partners. | Private Co. – 2 directors Public Co. – 3 directors |

INCORPORATION OF LLP

ESSENTIAL ELEMENTS TO INCORPORATE LLP –

Under the LLP Act, 2008, the following elements are very essential to form a LLP in India:

- i. To complete and submit incorporation document in the form prescribed with the Registrar electronically;
- ii. To have at least two partners for incorporation of LLP [Individual or body corporate];
- iii. To have registered office in India to which all communications will be made and received;
- iv. To appoint minimum two individuals as designated partners who will be responsible for number of duties including doing of all acts, matters and things as are required to be done by the LLP. Atleast one of them should be resident in India.
- v. A person or nominee of body corporate intending to be appointed as designated partner of LLP should hold a Designated Partner Identification Number (DPIN) allotted by MCA.
- vi. To execute a partnership agreement between the partners inter se or between the LLP and its partners. In the absence of any agreement the provisions as set out in First Schedule of LLP Act, 2008 will be applied.
- vii. LLP Name.

Limited Liability Partnerships are bodies corporate and must be registered with the Registrar of LLP after following the provisions specified in the LLP Act, in a similar way of setting up a company with distinct name. The LLP cannot have the same name with any other LLP, Partnership Firm or Company.

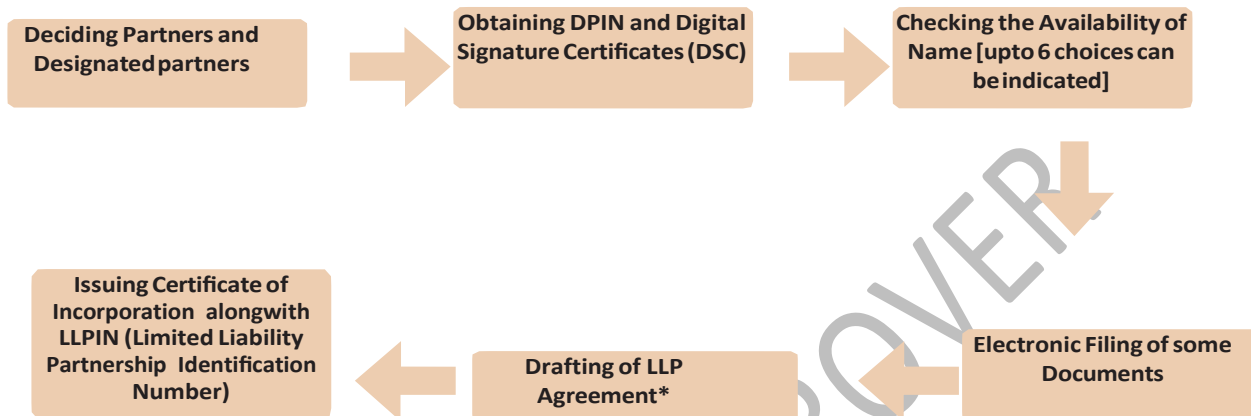
To create a LLP proper formation documents must be filed with the registrar along with the necessary filing fees.

FOR LIVE [FACE TO FACE AND PEN DRIVE CLASSES](#) CONTACT:

Contents of LLP Agreement

- i. Name of LLP
- ii. Name & address of Partners & Designated Partners.
- iii. Form of contribution & interest on contribution
- iv. Profit sharing ratio
- v. Remuneration of Partners
- vi. Rights & Duties of Partners
- vii. Proposed Business
- viii. Rules for governing LLP.

PROCESS:



STEPS TO INCORPORATE LLP

(i) Name reservation

- The first step to incorporate Limited Liability Partnership (LLP) is reservation of name of LLP.
- Applicant has to file e-Form 1, for ascertaining availability and reservation of the name of a LLP business.

(ii) Incorporate LLP

- After reserving a name, user has to file e-Form 2 for incorporating a new Limited Liability Partnership (LLP).
- e-Form 2 contains the details of LLP proposed to be incorporated, partners'/ designated partners' details and consent of the partners/designated partners to act as partners/ designated partners.

(iii) LLP Agreement

- Execution of LLP Agreement is mandatory as per Section 23 of the Act.
- LLP Agreement is required to be filed with the registrar in e- Form 3 within 30 days of incorporation of LLP.



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