

CHAPTER-5 THE LIMITED LIABILITY PARTNERSHIP ACT, 2008

1.1 - Introduction

Give brief introduction of The Limited Liability Partnership Act, 2013.

1. The Ministry of Law and Justice on 9th January 2007 notified the Limited Liability Partnership Act, 2008.
2. 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.
3. **The LLP Act, 2008 is applicable to the whole of India.**
4. 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.
5. The LLP Act, 2008 has 81 sections and 4 schedules.
6. The First Schedule deals with mutual rights and duties of partners, as well limited liability partnership and its partners where there is absence of a formal agreement with respect to them.
7. The Second Schedule deals with conversion of a firm into LLP.
8. The Third Schedule deals with conversion of a private company into LLP.
9. The Fourth Schedule deals with conversion of unlisted public company into LLP.
10. The Ministry of Corporate Affairs 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.
11. It is also to be noted that the **Indian Partnership Act, 1932 is not applicable to LLP**

LLP gives the benefits of limited liability of a company and the flexibility of a partnership. Comment

LLP has benefits of both Company and Partnership firm:-

The lawmakers envisaged the need for bringing out a new legislation for creation of the Limited Liability Partnership to meet with the contemporary growth of the Indian economy.

A need has been felt for a new corporate form that would provide an alternative to the traditional partnership with unlimited personal liability on the one hand and the statute-based governance structure of the limited liability company on the other hand. In order to enable professional expertise and entrepreneurial initiative and combine, organize and operate in flexible, innovative and efficient manner, the LLP Act, 2008 was enacted.

Thus, LLP as a form of business organization is an alternative corporate business vehicle. It provides the benefits of limited liability but allows its members the flexibility of organizing their internal structure as a partnership based on a mutually arrived agreement.

The LLP form enables entrepreneurs, professionals and enterprises providing services of any kind or engaged in scientific and technical disciplines, to form commercially efficient vehicles suited to their requirements. Owing to flexibility in its structure and operation, the LLP is a suitable vehicle for small enterprises and for investment by venture capital.

Define Body Corporate.

[(Section 2(d))]: It means a company as defined in clause (20) of section 2 of the Companies Act, 2013 and includes

- (i) a limited liability partnership registered under this Act;
- (ii) a limited liability partnership incorporated outside India; and
- (iii) a company incorporated outside India,

but does not include

- (i) a corporation sole;
- (ii) a co-operative society registered under any law for the time being in force; and
- (iii) any other body corporate (not being a company as defined in clause (20) of section 2 of the Companies Act, 2013 or a limited liability partnership as defined in this Act), which the Central Government may, by notification in the Official Gazette, specify in this behalf.

Define Business.

Business [Section 2(e)]: “Business” includes every trade, profession, service and occupation except any activity which the Central Government may, by notification, exclude.

Define Designated Partner.

Designated Partner [Section 2(j)]: “Designated partner” means any partner designated as such pursuant to section 7.

Define Entity.

Entity [Section 2(k)]: “Entity” means any body corporate and includes, for the purposes of sections 18, 46, 47, 48, 49, 50, 52 and 53, a firm setup under the Indian Partnership Act, 1932.

Define Financial Year.

Financial Year [Section 2(l)]: “Financial year”, in relation to a LLP, means the period from the 1st day of April of a year to the 31st day of March of the following year.

However, in the case of a LLP incorporated after the 30th day of September of a year, the financial year may end on the 31st day of March of the year next following that year.

Example 1: If a LLP has been incorporated on 15th October, 2017, then its financial year may be from 15th October, 2017 to 31st March, 2019.

The Income Tax department has prescribed uniform financial year from 1st April to 31st March of next year. In keeping with the Income tax law, the financial year for LLP should always be from 1st April to 31st March each year.

Define Foreign LLP.

Foreign LLP [section 2(m)]: It means a LLP formed, incorporated or registered outside India which establishes a place of business within India.

Define Limited Liability Partnership.

Limited liability partnership [Section 2(n)]: Limited Liability Partnership means a partnership formed and registered under this Act.

Define Small Limited Liability Partnership.

"Small limited liability partnership [Section It means a limited liability 2(ta)]: It means partnership-

- (i) The contribution of which, does not exceed twenty-five lakh rupees or such higher amount, not exceeding five crore rupees, as may be prescribed; and
- (ii) The turnover of which, as per the Statement of Accounts and Solvency for the immediately preceding financial year, does not exceed forty lakh rupees or such higher amount, not exceeding fifty crore rupees, as may be prescribed; or
- (iii) Which meets such other requirements as may be prescribed, and fulfils such terms and conditions as may be prescribed;

1.2 - Meaning and Features

Define Limited Liability Partnership Agreement.

Limited Liability partnership agreement [Section 2(o)]: It means any written agreement between the partners of the LLP or between the LLP and its partners which determines the mutual rights and duties of the partners and their rights and duties in relation to that LLP.

Explain the meaning of Limited Liability partnership.

Limited liability partnership [Section 2(n)]: Limited Liability Partnership means a partnership formed and registered under this Act.

Meaning: 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 as a separate legal entity and business organisation is 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.

Explain the characteristics of Limited Liability partnership.

1. **LLP is a body corporate:** Section 2(1)(d) of the LLP Act, 2008 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 and shall have perpetual succession. Therefore, any change in the partners of a LLP shall not affect the existence, rights or liabilities of the LLP.

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.

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. It is capable of entering into contracts and holding property in its own name.

3. **Separate Legal Entity:** The **LLP as 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.
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. Such contribution may be of tangible or intangible nature or both.
Example 4: The professionals like Engineering consultants, Legal Advisors and Accounting Professional are afraid of entering into business due to unlimited liability. Hence the LLP partnership Act provides an avenue for these professionals to Limited Liability Partnership firms which restricts their liability to the agreed amount. This has encouraged Professionals to form LLP.
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 agreements 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 there under, 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 as **place of business within India**”. **Foreign LLP can become a partner in an Indian LLP.**

Define Partner. What is the Minimum Number and maximum number of partners in LLP.

Partner [Section 2(q)]: Partner, in relation to a LLP, means any person who becomes a partner in the LLP in accordance with the LLP agreement.

Minimum number of partners (Section 6):

- (i) Every LLP shall have **at least two partners.**
- (ii) **There is no Limit of maximum number of partners**

What will happen if the number of partner in LLP reduced below two?

If at any time the **number of partners of a LLP is reduced below two and the LLP carries on business for more than six months while the number is so reduced, the person, who is the only partner of the LLP during the time that it so carries on business after those six months and has the knowledge of the fact that it is carrying on business with him alone, shall be liable personally for the obligations of the LLP incurred during that period.**

Explain the provisions relating to designated partner.

Designated partners (Section 7):

- (1) Every limited liability partnership shall have at least two designated partners who are individuals and at least one of them shall be a resident in India:

Provided that in case of a limited liability partnership in which all the partners are bodies corporate or in which one or more partners are individuals and bodies corporate, at least two individuals who are partners of such limited liability partnership or nominees of such bodies corporate shall act as designated partners.

Explanation. For the purposes of this section, the term resident in India means a person who has stayed in India for a period of not less than one hundred and **twenty days during the financial year.**

- (2) Subject to the provisions of sub-section (1), if the incorporation document specifies who are to be designated partners, such persons shall be designated partners on incorporation; or states that each of the partners from time to time of limited liability partnership is to be designated partner, every partner shall be a designated partner;

any partner may become a designated partner by and in accordance with the limited liability partnership agreement and a partner may cease to be a designated partner in accordance with limited liability partnership agreement.

- (3) An individual shall not become a designated partner in any limited liability partnership unless he has given his prior consent to act as such to the limited liability partnership in such form and manner as may be prescribed.

- (4) Every limited liability partnership shall file with the Registrar the particulars of every individual who has given his consent to act as designated partner in such form and manner as may be prescribed within thirty days of his appointment.
- (5) An individual eligible to be a designated partner shall satisfy such conditions and requirements as may be prescribed.
- (6) Every designated partner of a limited liability partnership shall obtain a Designated Partners Identification Number (DPIN) from the Central Government and the provisions of **sections 153 to 159 (both inclusive) of the Companies Act, 2013** shall apply *mutatis mutandis* for the said purpose.

Explain the advantages of LLP.

1. LLP is organized and operates on the basis of an **agreement**
2. LLP **provides flexibility** without imposing detailed legal and procedural requirements
3. LLP is **easy to form**
4. All **partners of LLP enjoy limited liability**
5. LLP has **flexible capital structure**
6. LLP is **easy to dissolve**

1.3 - Incorporations & Registrations of LLP

What is the procedure to be followed for incorporation of LLP.

Incorporation document (Section 11): The most important document needed for registration is the incorporation document.

- (1) For a LLP to be incorporated:
 - (a) **two or more persons associated for carrying on a lawful business with a view to earn and share profit** shall subscribe their names to an incorporation document;
 - (b) the **incorporation document shall be filed in such manner and with such fees, as may be prescribed with the Registrar of the State** in which the registered office of the LLP is to be situated; and
 - (c) Statement to be filed:
 - there shall be filed along with the **incorporation document, a statement in the prescribed form,**
 - made by either an **advocate, or a Company Secretary or a Chartered Accountant or a Cost Accountant, who is engaged in the formation of the LLP** and
 - by any one who subscribed his name to the incorporation document,
 - that **all the requirements of this Act and the rules made thereunder have been complied with,**
 - in respect of incorporation and matters precedent and incidental thereto.
- (2) The incorporation document shall—
 - (a) be in a form as may be prescribed;
 - (b) **state the name of the LLP;**
 - (c) **state the proposed business of the LLP;**

- (d) **state the address of the registered office of the LLP;**
 - (e) state the name and address of each of the persons who are to be partners of the LLP on incorporation;
 - (f) state the name and address of the persons who are to be designated partners of the LLP on incorporation;
 - (g) contain such other information concerning the proposed LLP as may be prescribed.
- (3) If a person **makes a statement** as discussed above which he—
- (a) **knows to be false;** or
 - (b) **does not believe to be true,** shall be punishable
 - with **imprisonment for a term which may extend to 2 years** and
 - with fine which shall not be less than **Rs. 10,000** but which may extend to **Rs. 5 Lakhs.**

Incorporation by registration (Section 12):

- (1) When the requirements imposed by clauses (b) and (c) of sub-section (1) of section 11 have been complied with, the Registrar shall retain the incorporation document and, unless the requirement imposed by clause (a) of that sub-section has not been complied with, he shall, within a period of 14 days—
 - (a) register the incorporation document; and
 - (b) give a certificate that the LLP is incorporated by the name specified therein.
- (2) The Registrar may accept the statement delivered under clause (c) of sub-section (1) of section 11 as sufficient evidence that the requirement imposed by clause (a) of that sub-section has been complied with.
- (3) The certificate issued under clause (b) of sub-section (1) shall be signed by the Registrar and authenticated by his official seal.
- (4) **The certificate shall be conclusive evidence that the LLP is incorporated by the name specified therein.**

What is the effect of registration of LLP.

On registration of a LLP, by its name, it shall be capable of :- (Section 14):

- (1) **Suing and being sued**
- (2) **Acquiring, owning, holding and developing or property,** whether movable or immovable, tangible or intangible
- (3) **Having a common seal,** if it decided to have one
- (4) **Doing and suffering such other acts and things as bodies corporate may lawfully do** and suffer

Explain the provisions relating to registered office of LLP and also the penalty if any of the provisions contravened by the LLP.

Registered office of LLP and change therein (Section 13):

- (1) **Every LLP shall have a registered office** to which all communications and notices may be addressed and where they shall be received.
- (2) **A document may be served on a LLP or a partner or designated partner thereof by sending it by post under a certificate of posting or by registered post** or by any other manner, as may be prescribed, **at the registered office and any other address specifically declared by the LLP for the purpose** in such form and manner as may be prescribed.

- (3) A **LLP may change the place of its registered office and file the notice of such change with the Registrar** in such form and manner and subject to such conditions as may be prescribed and any such change shall take effect only upon such filing.
- (4) If any default is made in complying with the requirements of this section, the limited liability partnership and its every partner shall be liable to a penalty of five hundred rupees for each day during which the default continues, subject to a maximum of fifty thousand rupees for the limited liability partnership and its every partner.

Explain the provisions relating to name of LLP.

Name (Section 15):

- (1) Every limited liability partnership shall have either the words **“limited liability partnership”** or the acronym **“LLP” as the last words of its name.**
- (2) No LLP shall be registered by a name which, in the opinion of the Central Government is—
 - (a) **undesirable;** or
 - (b) identical or too nearly resembles to that of any other LLP or body corporate or a registered trade mark, or a trade mark which is the subject matter of an application for registration of any other person under the Trade Marks Act, 1999.

What is the procedure to be followed for reservation of name of LLP.

Reservation of name (Section 16):

- (1) A person may apply in such form and manner and accompanied by such fee as may be prescribed to the **Registrar for the reservation of a name set out in the application as—**
 - (a) **the name of a proposed LLP;** or
 - (b) **the name to which a LLP proposes to change its name.**
- (2) **Upon receipt of an application** under sub-section (1) and on payment of the prescribed fee, the Registrar may, if he is satisfied, subject to the rules prescribed by the Central Government in the matter, that **the name to be reserved is not one which may be rejected on any ground referred to in sub-section (2) of section 15, reserve the name for a period of 3 months from the date of intimation by the Registrar.**

Explain the provisions relating to change of name of LLP.

Change of name of LLP (Section 17):

- (1) Notwithstanding anything contained in sections 15 and 16, if through inadvertence or otherwise, a limited liability partnership, on its first registration or on its registration by a new body corporate, its registered name;”, is registered by a name which is identical with or too nearly resembles to—
 - (a) that of any other limited liability partnership or a company; or
 - (b) a registered trade mark of a proprietor under the Trade Marks Act, 1999, as is likely to be mistaken for it, then on an application of such limited liability partnership or proprietor referred to in clauses (a) and (b) respectively or a company, the Central Government may direct that such limited liability partnership to change its name or new name within a period of three months from the date of issue of such direction:

Provided that an application of the proprietor of the registered trademarks shall be maintainable within a period of three years from the date of incorporation or registration or change of name of the limited liability partnership under this Act.

- (2) Where a limited liability partnership changes its name or obtains a new name under sub-section (1), it shall within a period of fifteen days from the date of such change, give notice of the change to Registrar along with the order of the Central Government, who shall carry out necessary changes in the certificate of incorporation and within thirty days of such change in the certificate of incorporation, such limited liability partnership shall change its name in the limited liability partnership agreement.
- (3) If the limited liability partnership is in default in complying with any direction given under sub-section (1), the Central Government shall allot a new name to the limited liability partnership in such manner as may be prescribed and the Registrar shall enter the new name in the register of limited liability partnerships in place of the old name and issue a fresh certificate of incorporation with new name, which the limited liability partnership shall use thereafter:

Provided that nothing contained in this sub-section shall prevent a limited liability partnership from subsequently changing its name in accordance with the provisions of section 16.

How to decide the mutual rights and duties of the partners of LLP?

Eligibility to be partners (Section 22): On the incorporation of a LLP, **the persons who subscribed their names to the incorporation document shall be its partners and any other person may become a partner of the LLP by and in accordance with the LLP agreement.**

Relationship of partners (Section 23):

- (1) Save as otherwise provided by this Act, the **mutual rights and duties of the partners** of a LLP, and the mutual rights and duties of a **LLP and its partners**, shall be **governed by the LLP agreement** between the partners, or between the LLP and its partners.
- (2) The LLP 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.
- (3) An agreement in writing made before the incorporation of a LLP between the persons who subscribe their names to the incorporation document may impose obligations on the LLP, provided such agreement is ratified by all the partners after the incorporation of the LLP.
- (4) **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 LLP and the partners shall be determined by the provisions relating to that **matter as are set-out in the First Schedule.**

Explain the provisions relating to cessation of partnership interest in LLP?

Cessation of partnership interest (Section 24):

- (1) **A person may cease to be a partner of a LLP in accordance with an agreement** with the other partners or, in the absence of agreement with the other partners as to cessation of being a partner, by **giving a notice in writing of not less than 30 days** to the other partners of his intention to resign as partner.
- (2) **A person shall cease to be a partner** of a LLP—
 - (a) on **his death or dissolution of the LLP**; or
 - (b) if he is **declared to be of unsound mind** by a competent court; or
 - (c) if he has applied to be **adjudged as an insolvent or declared as an insolvent.**

- (3) Where a person has ceased to be a partner of a LLP (hereinafter referred to as “former partner”), the former partner is to be regarded (in relation to any person dealing with the LLP) as still being a partner of the LLP unless—
 - (a) **the person has notice that the former partner has ceased to be a partner of the LLP; or**
 - (b) **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) Where a partner of a LLP ceases to be a partner, unless otherwise provided in the LLP agreement, **the former partner or a person entitled to his share in consequence of the death or insolvency of the former partner, shall be entitled to receive from the LLP—**
 - (a) **an amount equal to the capital contribution** of the former partner actually made to the LLP; and
 - (b) **his right to share in the accumulated profits of the LLP**, after the deduction of accumulated losses of the LLP, determined as **at the date the former partner ceased to be a partner.**
- (6) **A former partner or a person entitled to his share in consequence of the death or insolvency of the former partner shall not have any right to interfere in the management of the LLP.**

Explain the provisions relating to registration of changes in partners of LLP?

Registration of changes in partners (Section 25):

- (1) **Every partner shall inform the LLP of any change in his name or address within a period of 15 days of such change.**
- (2) **A LLP shall—**
 - (a) where a person becomes or ceases to be a partner, file a notice with the Registrar within 30 days from the date he becomes or ceases to be a partner; and
 - (b) where there is any change in the name or address of a partner, **file a notice with the Registrar within 30 days of such change.**
- (3) **A notice filed with the Registrar under sub-section (2)—**
 - (a) shall be in such form and **accompanied by such fees** as may be prescribed;
 - (b) shall be **signed by the designated partner of the LLP** and authenticated in a manner as may be prescribed; and
 - (c) if it **relates to an incoming partner**, shall contain a statement by such partner that he **consents to becoming a partner**, signed by him and authenticated in the manner as may be prescribed.
- (4) If the limited liability partnership contravenes the provisions of sub- section (2), the limited liability partnership and its every designated partner shall be liable to a penalty of ten thousand rupees.
- (5) If the contravention referred to in sub- section (1) is made by any partner of the limited liability partnership, such partner shall be liable to a penalty of ten thousand rupees.
- (6) Any person who ceases to be a partner of a LLP may himself file with the Registrar the notice referred to in sub-section (3) if **he has reasonable cause to believe that the LLP may not file the notice with the Registrar** and in case of any such notice filed by a partner, the **Registrar shall obtain a confirmation to this effect from the LLP** unless the LLP has also filed such notice.

However, where no confirmation is given by the LLP within 15 days, the registrar shall register the notice made by a person ceasing to be a partner under this section.

Explain the agency relation set out in section 26 of the LLP, Act, 2008? What is the extent of liability of LLP for the acts done by any of the partner.

Partner as agent (Section 26): Every partner of a LLP is, for the purpose of the business of the LLP, the agent of the LLP, but not of other partners.

Extent of liability of LLP (Section 27):

- (1) A **LLP is not bound by anything done by a partner** in dealing with a person **if—**
 - (a) the **partner** in fact **has no authority to act for the LLP** in doing a particular act; **and**
 - (b) the **person knows that he has no authority** or does not know or believe him to be a partner of the LLP.
- (2) The **LLP is liable if a partner of a LLP is liable to any person as a result of a wrongful act** or omission on his part in the course of the business of the LLP or with its authority.
- (3) **An obligation of the LLP** whether arising in contract or otherwise, **shall be solely the obligation of the LLP.**
- (4) The **liabilities of the LLP shall be met out of the property of the LLP.**

Extent of liability of partner (Section 28):

- (1) A **partner is not personally** liable, directly or indirectly for an obligation referred to in sub-section (3) of section 27 solely by reason of being a partner of the LLP.
- (2) The provisions of sub-section (3) of section 27 and sub-section (1) of this section shall not affect the personal liability of a partner **for his own wrongful act or omission, but a partner shall not be personally liable for the wrongful act or omission of any other partner of the LLP.**

Holding out (Section 29):

- (1) Any person,
 - who by words spoken or written or by conduct, represents himself, or knowingly permits himself to be represented to be a partner in a LLP
 - is liable to any person
 - who has on the faith of any such representation
 - given credit to the LLP, whether the person representing himself or represented to be a partner does or does not know that the representation has reached the person so giving credit.

However,

- where any credit is received by the LLP as a result of such representation,
 - the LLP shall,
 - without prejudice to the liability of the person so representing himself or represented to be a partner,
 - be liable to the extent of credit received by it or any financial benefit derived thereon.
- (2) Where after a partner's death the business is continued in the same LLP name, the continued use of that name or of the deceased partner's name as a part thereof shall not of itself make his legal representative or his estate liable for any act of the LLP done after his death.

Unlimited liability in case of fraud (Section 30):

- (1) **In case of fraud:**
 - In the event of an act carried out by a LLP, or any of its partners,
 - with intent to defraud creditors of the LLP or any other person, or for any fraudulent purpose,

- **the liability of the LLP and partners who acted with intent to defraud creditors or for any fraudulent purpose**
- **shall be unlimited for all or any of the debts or other liabilities of the LLP.**

However, in case any such act is carried out by a partner, the LLP is liable to the same extent as the partner unless it is established by the LLP that such act was without the knowledge or the authority of the LLP.

(2) Where any business is carried on with such intent or for such purpose as mentioned in sub-section (1), every person who was knowingly a party to the carrying on of the business in the manner aforesaid shall be punishable with

- imprisonment for a term which may extend to 5 years **and**
- **with fine** which shall not be less than **Rs. 50,000** but which may extend to **Rs. 5 Lakhs.**

(3) **Where a LLP or any partner or designated partner or employee of such LLP has conducted the affairs of the LLP in a fraudulent manner**, then without prejudice to any criminal proceedings which may arise under any law for the time being in force, the LLP and any **such partner or designated partner or employee shall be liable to pay compensation to any person who has suffered any loss or damage** by reason of such conduct.

However, **such LLP shall not be liable if any such partner or designated partner or employee has acted fraudulently without knowledge of the LLP.**

Explain the provisions relating to whistle blowing given under the LLP Act, 2008?

Whistle blowing (Section 31):

- (1) The **Court or Tribunal may reduce or waive any penalty leviable against any partner or employee** of a LLP, if it is satisfied that—
- such **partner or employee** of a LLP has **provided useful information during investigation** of such LLP; or
 - **when any information given by any partner or employee** (whether or not during investigation) leads to LLP or any partner or employee of such LLP **being convicted under this Act or any other Act.**
- (2) **No partner or employee** of any LLP may be **discharged, demoted, suspended, threatened, harassed** or in any other manner **discriminated** against the terms and conditions of his LLP or employment **merely because of his providing information or causing information** to be provided pursuant to sub-section (1).

Whether LLP need to maintain the proper books of accounts? Maintenance of books of account, other records and audit, etc. (Section 34):

- (1) Proper Books of account:
- The **LLP shall maintain such proper books** of account as may be prescribed
 - relating to its **affairs for each year** of its existence
 - on **cash basis or accrual basis** and
 - according to **double entry system of accounting** and
 - shall **maintain the same at its registered office**
 - for **such period as may be prescribed.**

Every LLP shall file statement of Account and Solvency. Discuss.

- (2) Statement of Account and Solvency:
- Every LLP shall,
 - **within a period of 6 months from the end of each financial year,**
 - prepare a **Statement of Account and Solvency**
 - for the said financial year as **at the last day of the said financial year**
 - in such form as may be prescribed, and
 - such statement shall be **signed by the designated partners of the LLP.**
- (3) **Every LLP shall file** within the prescribed time, the **Statement of Account and Solvency** prepared pursuant to sub-section (2) **with the Registrar every year** in such form and manner and **accompanied by such fees** as may be prescribed.
- (4) The accounts of LLP shall be audited in accordance with such rules as may be prescribed. However, the **Central Government may, by notification in the Official Gazette, exempt any class or classes of LLP from the requirements of this sub-section.**
- (5) Any limited liability partnership which fails to comply with the provisions of sub-section (3), such limited liability partnership and its designated partners shall be liable to a penalty of one hundred rupees for each day during which such failure continues, subject to a maximum of one lakh rupees for the limited liability partnership and fifty thousand rupees for every designated partner.
- (6) Any limited liability partnership which fails to comply with the provisions of sub-section (1), sub-section (2) and sub-section (4), such limited liability partnership shall be punishable with fine which shall not be less than twenty-five thousand rupees, but may extend to five lakh rupees and every designated partner of such limited liability partnership shall be punishable with fine which shall not be less than ten thousand rupees, but may extend to one lakh rupees.

Should LLP follow any accounting standards and auditing standard?

Accounting and auditing standards (section 34A).

The Central Government may, in consultation with the National Financial Reporting Authority constituted under section 132 of the Companies Act, 2013,

- (a) prescribe the standards of accounting; and
- (b) prescribe the standards of auditing, as recommended by the Institute of Chartered Accountants of India constituted under section 3 of the Chartered Accountants Act, 1949, for a class or classes of limited liability partnerships.]

Explain the provision relating to annual return given under the LLP, Act 2008?

Annual return (Section 35):

1. **Every LLP shall file an annual return** duly authenticated with **the Registrar within 60 days of closure of its financial year** in such form and manner and accompanied by such fee as may be prescribed.

Example 5: Suppose, the financial year of a LLP closes on 31st March, 2020 then the LLP has to file an annual return with the Registrar latest by 30th May, 2020.

The LLP contra-distinct from Partnership Act, 1932 has prescribed the filing of Annual Return in accordance with Companies Act, 2013. This is a new feature of the LLPs.

2. If any limited liability partnership fails to file its annual return under sub-section (1) before the expiry of the period specified therein, such limited liability partnership and its designated partners shall be liable to a penalty of one hundred rupees for each day during which such failure continues, subject to a maximum of one lakh rupees for the limited liability partnership and fifty thousand rupees for designated partners.

Is there any provision for converting Firm, private company, unlisted public company into LLP.

Conversion from firm into LLP (Section 55): A firm may convert into a LLP in accordance with the **provisions of this Chapter and the Second Schedule.**

Conversion from private company into LLP (Section 56): A private company may convert into a LLP in accordance with the **provisions of this Chapter and the Third Schedule.**

Conversion from unlisted public company into LLP (Section 57): An unlisted public company may convert into a LLP in accordance with the provisions of this Chapter and the **Fourth Schedule.**

What is the effect of conversion of Firm, private company, unlisted public company into LLP.

Registration and effect of conversion (Section 58):

Registration:

- (i) **The Registrar, on satisfying that a firm, private company or an unlisted public company**, as the case may be, **has complied with the provisions** of the various Schedules, provisions of this Act and the rules made there under, register the documents **issue a certificate of registration** in such form as the Registrar may determine stating that the LLP is, on and from the date specified in the certificate, registered under this Act.
- (ii) The **LLP shall, within 15 days of the date of registration, inform the concerned Registrar of Firms or Registrar of Companies**, as the case may be, with which it was registered under the provisions of the Indian Partnership Act, 1932 or the Companies Act, 2013 (Now Companies Act, 2013) as the case may be, **about the conversion** and of the particulars of the LLP in such form and manner as may be prescribed.
- (iii) **Upon such conversion, the partners of the firm, the shareholders of private company or unlisted public company**, as the case may be, the LLP to which such firm or such company has converted, and the partners of the **LLP shall be bound by the provisions of the various Schedules**, as the case may be, applicable to them.
- (iv) Upon such conversion, on and from the date of certificate of registration, the effects of the conversion shall be such as specified in the various schedules, as the case may be.

Effect of Registration: Notwithstanding anything contained in any other law for the time being in force, on and from the date of registration specified in the certificate of registration issued under the various Schedule, as the case may be,—

- (a) **there shall be a LLP by the name specified in the certificate of registration registered** under this Act;
- (b) **all tangible (movable or immovable) and intangible property vested in the firm or the company**, as the case may be, all assets, interests, rights, privileges, liabilities, obligations relating to the firm or the company, as the case may be, and the whole of the undertaking of the firm or the company, as the case may be, shall be transferred to and shall vest in the limited liability partnership without further assurance, act or deed; and
- (c) the firm or the company, as the case may be, shall be deemed to be dissolved and removed from the records of the Registrar of Firms or Registrar of Companies, as the case may be.

Explain the provision relating to winding up and dissolution of LLP.

Winding up and dissolution (Section 63): The winding up of a LLP may be **either voluntary or by the Tribunal** and LLP, so wound up may be dissolved.

Circumstances in which LLP may be wound up by Tribunal (Section 64): A LLP may be wound up by the Tribunal:

1. if the **LLP decides that LLP be wound up by the Tribunal;**
2. if, for a **period of more than six months, the number of partners of the LLP is reduced below two;**
3. if the **LLP is unable to pay its debts;**
4. if the LLP has **acted against the interests of the sovereignty and integrity of India**, the security of the State or public order;
5. if the LLP has made a default in filing with the Registrar **the Statement of Account and Solvency or annual return for any five consecutive financial years; or**
6. if the **Tribunal is of the opinion that it is just and equitable** that the LLP be wound up.

Rules for winding up and dissolution (Section 65): The Central Government may make rules for the provisions in relation to **winding up and dissolution of LLP.**

What will be the rights and liabilities of a partner who lends money to LLP?

Business transactions of partner with LLP (Section 66): A partner may lend money to and transact other business with the LLP and has the same rights and obligations with respect to the loan or other transactions **as a person who is not a partner.**

Will any provision of Companies Act, 2013 is applicable to LLP formed under the LLP Act, 2008 ?

Application of the provisions of the Companies Act (Section 67):

- (1) The Central Government may, by notification in the Official Gazette, direct that any of the provisions of the Companies Act, 2013 specified in the notification—
 - shall apply to any LLP; or
 - shall apply to any LLP with such exception, modification and adaptation, as may be specified, in the notification.
- (2) A copy of every notification proposed to be issued under sub-section (1)
 - shall be laid in draft before each House of Parliament, while it is in session,
 - for a total period of 30 days which may be comprised in one session or in two or more successive sessions, and
 - if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification,
 - the notification shall not be issued or, as the case may be,
 - shall be issued only in such modified form as may be agreed upon by both the Houses.

What is the composition of Special Court under the LLP Act, 2008 ?

Establishment of Special Courts (Section 67A).

- (1) The Central Government may, for the purpose of providing speedy trial of offences under this Act, by notification, establish or designate as many Special Courts as may be necessary for such area or areas, as may be specified in the notification.
- (2) The Special Court shall consist of—
 - (a) a single Judge holding office as Sessions Judge or Additional Sessions Judge, in case of offences punishable under this Act with imprisonment of three years or more; and

- (b) a Metropolitan Magistrate or a Judicial Magistrate of the first class, in the case of other offences, who shall be appointed by the Central Government with the concurrence of the Chief Justice of the High Court:

Provided that until Special Courts are designated or established under sub- section (1), the Courts designated as Special Courts in terms of section 435 of the Companies Act, 2013 shall be deemed to be Special Courts for the purpose of trial of offences punishable under this Act:

Provided further that notwithstanding anything contained in the Code of Criminal Procedure, 1973, any offence committed under this Act, which is triable by a Special Court shall, until a Special Court is established under this Act or the Companies Act, 2013, be tried by a Court of Sessions or the Court of Metropolitan Magistrate or a Judicial Magistrate of the first class, as the case may be, exercising jurisdiction over the area.]

What are the powers given to Special Court under the LLP Act, 2008 ?

Procedure and powers of Special Court (Section 67B)

- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, all offences specified under sub- section (1) of section 67A shall be triable only by the Special Court established or designated for the area in which the registered office of the limited liability partnership is situated in relation to which the offence is committed or where there are more than one Special Courts for such area, by such one of them as may be specified in this behalf by the High Court concerned.
- (2) While trying an offence under this Act, a Special Court may also try an offence other than an offence under this Act with which the accused may, under the Code of Criminal Procedure, 1973 be charged at the same trial.
- (3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the Special Court may, if it thinks fit, try in a summary way any offence under this Act which is punishable with imprisonment for a term not exceeding three years:

Provided that in the case of any conviction in a summary trial, no sentence of imprisonment for a term exceeding one year shall be passed:

Provided further that, when at the commencement of or in the course of a summary trial, it appears to the Special Court that the nature of the case is such that the sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the Special Court shall, after hearing the parties, record an order to that effect and thereafter recall any witnesses who may have been examined and proceed to hear or re- hear the case in accordance with the procedure for the regular trial.

Appeal and revision (Section 67C)

The High Court may 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.]

Can a person take the copy or extract of any document filed with registrar? Will the same be admissible under the court of law as evidence?

Electronic filing of documents (Section 68):

- (1) **Any document required to be filed, recorded or registered under this Act may be filed,** recorded or registered in such manner and subject to such conditions **as may be prescribed.**
- (2) **A copy of or an extract from any document** electronically filed with or submitted to the Registrar **which is supplied or issued by the Registrar and certified through affixing digital signature** as per the Information Technology Act, 2000 **to be a true copy of or extract from such document** shall, in any proceedings, be admissible in evidence as of equal validity with the original document.
- (3) **Any information supplied by the Registrar that is certified by the Registrar through affixing digital signature to be a true extract from any document filed** with or submitted to the Registrar shall, in any proceedings, be admissible in evidence and be presumed, unless evidence to the contrary is adduced, to be a true extract from such document.

Who has the power to appoint registrar, additional registrar, deputy registrar and assistant register ?

- (1) For the purpose of exercising such powers and discharging such functions as are conferred on the Central Government by or under this Act or under rules made there under and for the purpose of registration of limited liability partnerships under this Act, the Central Government shall, by notification, establish such number of registration offices at such places as it thinks fit, specifying their jurisdiction.
- (2) The Central Government may appoint such Registrars, Additional Registrars, Joint Registrars, Deputy Registrars and Assistant Registrars as it considers necessary, for the registration of limited liability partnerships and discharge of various functions under this Act.
- (3) The powers and duties of the Registrars referred to in sub-section (2) and the terms and conditions of their service shall be such as may be prescribed.
- (4) The Central Government may direct the Registrar to prepare a seal or seals for the authentication of documents required for, or connected with the registration of limited liability partnerships.

Is there any additional fees to be paid by LLP if it fails to file any document or return with registrar?

Payment of additional fee (Section 69):

Any document or return required to be registered or filed under this Act with Registrar, if, is not registered or filed in time provided therein, may be registered or filed after that time, on payment of such additional fee as may be prescribed in addition to any fee as is payable for filing of such document or return:

Provided that such document or return shall be filed after the due date of filing, without prejudice to any other action or liability under this Act:

Provided further that a different fee or additional fee may be prescribed for different classes of limited liability partnerships or for different documents or returns required to be filed under this Act or rules made thereunder.

1.4 - Differences

Differentiate between LLP and Partnership Firm.

	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 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.

Differentiate between LLP and Limited Liability Company.

	Basis	LLP	Limited Liability Company
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 contract 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 Pvt. Co. to contain the word “Private limited” as suffix.
5.	No. 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 partners is limited to the extent of agreed contribution in case of intention is 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/designate d partners	Minimum 2 designated partners.	Pvt. Co. – 2 directors Public co. – 3 directors

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