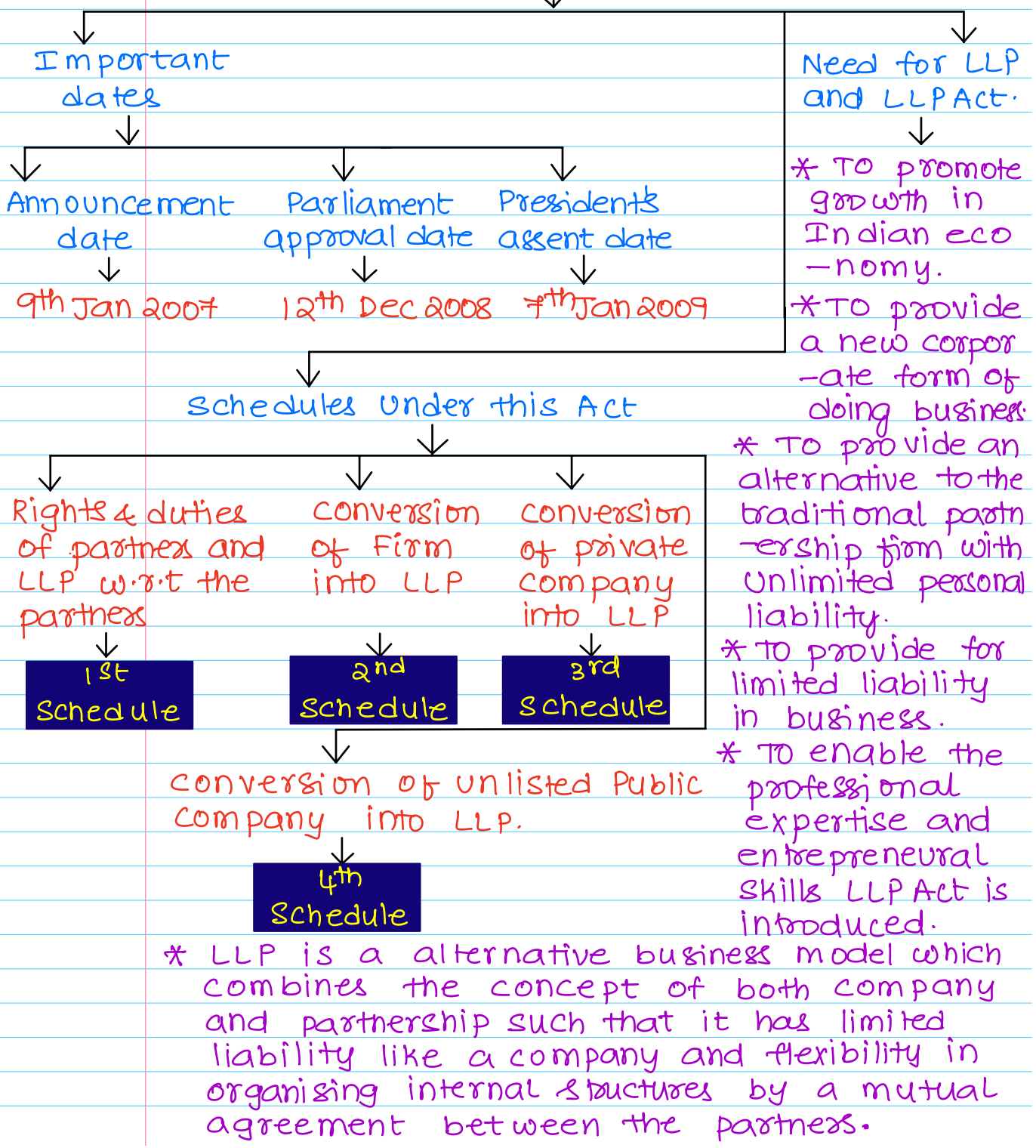


THE LIMITED LIABILITY PARTNERSHIP ACT, 2008

1. Introduction



Important dates

Need for LLP and LLP Act.

Announcement date

Parliament approval date

President's assent date

* TO promote growth in Indian economy.

9th Jan 2007

12th Dec 2008

7th Jan 2009

* TO provide a new corporate form of doing business.

Schedules Under this Act

* TO provide an alternative to the traditional partnership form with unlimited personal liability.

Rights & duties of partners and LLP w.r.t the partners

Conversion of Firm into LLP

Conversion of private company into LLP

* TO provide for limited liability in business.

1st Schedule

2nd Schedule

3rd Schedule

Conversion of unlisted Public company into LLP.

* TO enable the professional expertise and entrepreneurial skills LLP Act is introduced.

4th Schedule

* LLP is a alternative business model which combines the concept of both company and partnership such that it has limited liability like a company and flexibility in organising internal structures by a mutual agreement between the partners.

2. Definitions under this chapter

Part A

1. Body Corporate

2. Business

means

does not include

includes

does not include

a company as defined under sec. 2(20) of CA 2013.

corporation sole
B.C. notified by C.G.
co-operative societies

every Trade
profession
Service
Occupation

includes

LLP regd under this Act
LLP regd outside India

Any activity excluded by C.G.

Company incorporated outside India.

3. Limited Liability partnership

4. Partner

5. Foreign LLP

LLP

Partner in relation to LLP means a person

means an LLP

means a partnership which is formed and registered under this Act.

who become a partner of LLP under LLP agreement

cond-1 formed/ regd/ incorporated outside India
cond-2 establishes a Place of business in India.

Part B

other definitions under this Act

6. Financial year

General case

A financial year means a period

which starts on 1st April of a year

(+)

which ends on 31st March of immediate next year.

Exceptional case

If any LLP is incorporated after 30th September of a year, then the financial year is as under

(or)

option-1

may close its 1st FY on immediate next 31st March

1st FY will have < 12 months.

option-2

may close its 1st FY on the 31st March following immediate next 31st March.

1st FY will have > 12 months.

7. LLP agreement

mode

LLP agreement must be in written form.

Agreement b/w whom?

- * Partners
- * Partners with LLP.

contents

mutual rights & duties.

8. Small LLP

IMPORTANT

small LLP means an LLP

(or)

option-1

capital contribution \neq ₹25L

C.G may, extend the limit \neq ₹5cr

(+)

Turn over as 'SAS' of IPFY.

C.G may, extend the limit \neq ₹5cr

option-2

By fulfilling certain conditions.

Amd

IMPORTANT

3.

Designated partner (Section 7)

1. Basic definition

Designated partner

means

a partner

who is designated as such

as per Sec. 7.

2. Modes of appointment

Situation - 1

At the time of incorporation

(Cor)
way - 1

Inc. doc may specify who will be DPs and such persons shall be DPs on inc.

Situation - 2

After incorporation

way - 2

Inc. doc may state that each partner shall be DP and in such case all partners shall be DPs.

3. Other points

Every Individual shall give his prior written consent to act as a 'DP'.

LLP shall file consent with ROC within 30 days of the appointment.

Every DP shall obtain DPIN, U/s 153-159 of CA 2013.

Preliminary conditions

* minimum 2 DPs
* only individuals to be DPs.

* At least one DP shall be resident in India.

* A LLP with all partners being BC, The nominees shall become DPs.

* A LLP with both BC & individuals shall have such individual partners to be DPs (Cor) nominees of the BC being individuals to be DP.

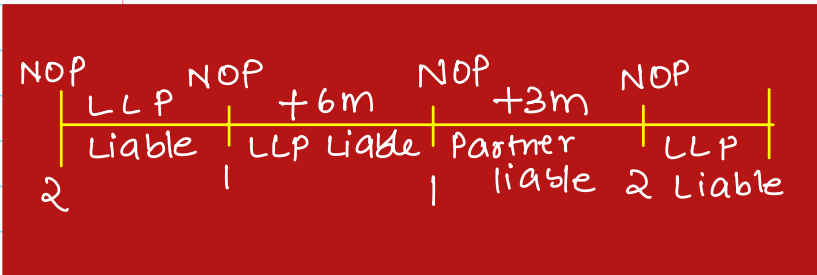
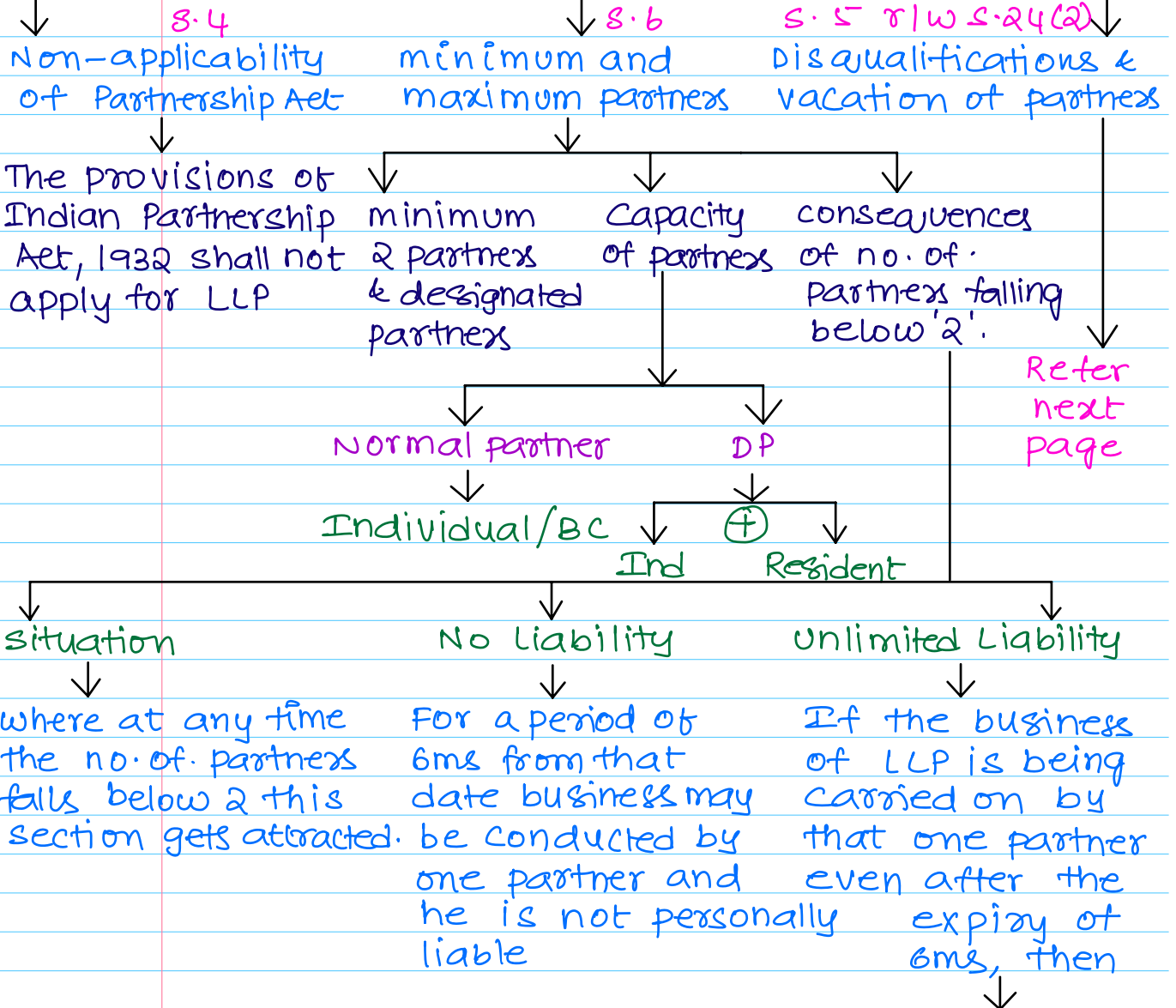
Resident shall stay in India for 120 days during the F.Y.

contd.....

Particulars	Details
5. Artificial Legal person	<ul style="list-style-type: none">* LLP is created by legal process called incorporation.* Once incorporated, it is clothed with all legal rights of an individual.* However, a LLP cannot<ul style="list-style-type: none">• be sent to jail• take an oath• marry/divorce• carry on profession
6. Common Seal	<ul style="list-style-type: none">* LLP is an artificial person which can act through its agents namely partners & DPs.* LLP may have a common seal.* It is not mandatory to have common seal.* It shall be affixed by concerned official in the witness of at least 2 DPs.
7. Limited Liability	<ul style="list-style-type: none">* Partners of LLP are agents to LLP and not to other partners. Therefore, one partner is not liable for acts of another.* Liability is limited to the extent of Capital contribution.
8. mgt of business	<ul style="list-style-type: none">* All the partners including DPs will manage the business of LLP.* However, DPs are responsible for legal compliances.
9. No. of partners.	<ul style="list-style-type: none">* minimum partners : 2* minimum DPs : 2 (only individual) (1 must be a resident)* No limit on maximum partners.
10. Business for profits only.	<ul style="list-style-type: none">* LLP shall be formed with a motive to do business and to make profits.* Therefore, a LLP cannot be formed for non-economic/Charitable purpose.

5.

Basic sections governing LLP



That one partner will become personally liable for all obligations of LLP after the expiry of 6 months.

contd.....

Dis-qualifications (S.5) + Vacation S.24(2)

Disqualifications
(S.5)

Vacation
[S.24(2)]

Ground-1

Ground-2

end-1

end-2

He is an
undischarged
insolvent

Ground-3

He is of USM finding
& declared
by CC

finding
is in
force

He has applied
to be adjudicated
as insolvent &
appl is pending.

Ground-1

Ground-2

Ground-3

Ground-4

Death of
a partner

Dissolution
of LLP.

He is an USM
+ stands so
declared by CC

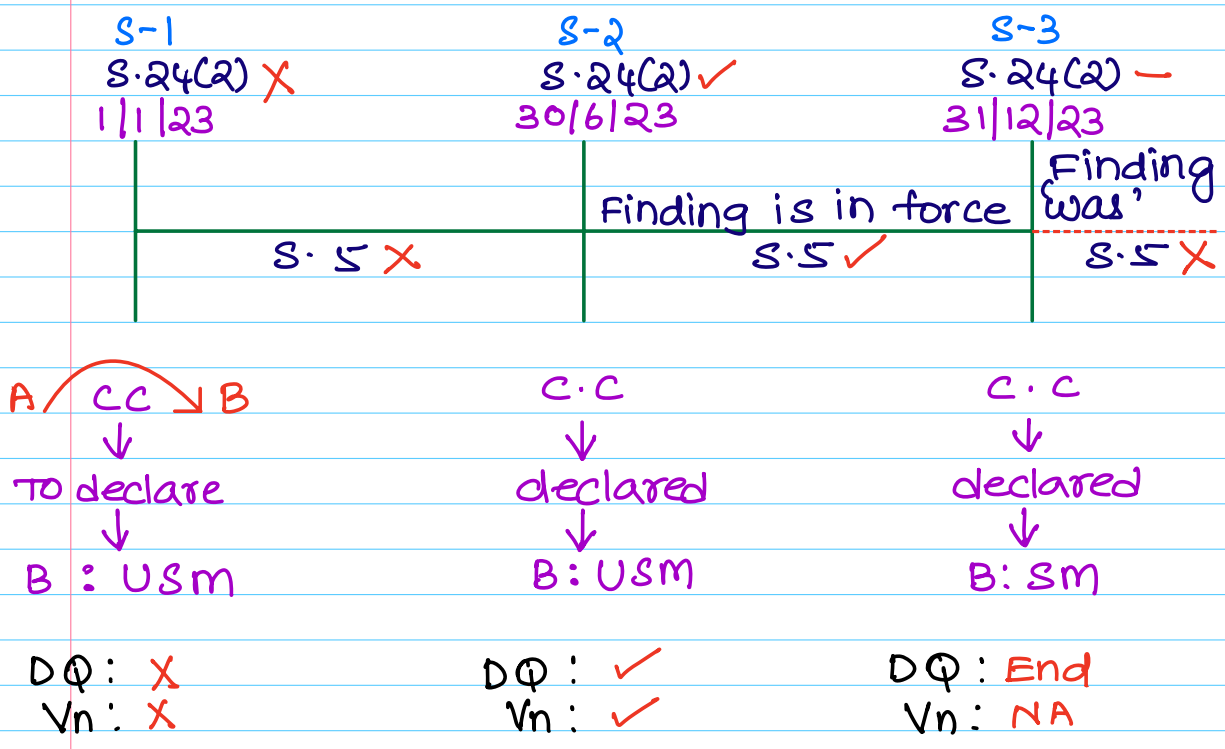
He has applied
to be adjudged
as an insolvent
and application
is pending

Ground-5

He is declared as an undischarged insolvent.

Timeline charts on s.5 w/ s.24(2)

Timeline chart 1: Ground of Unsound mind.

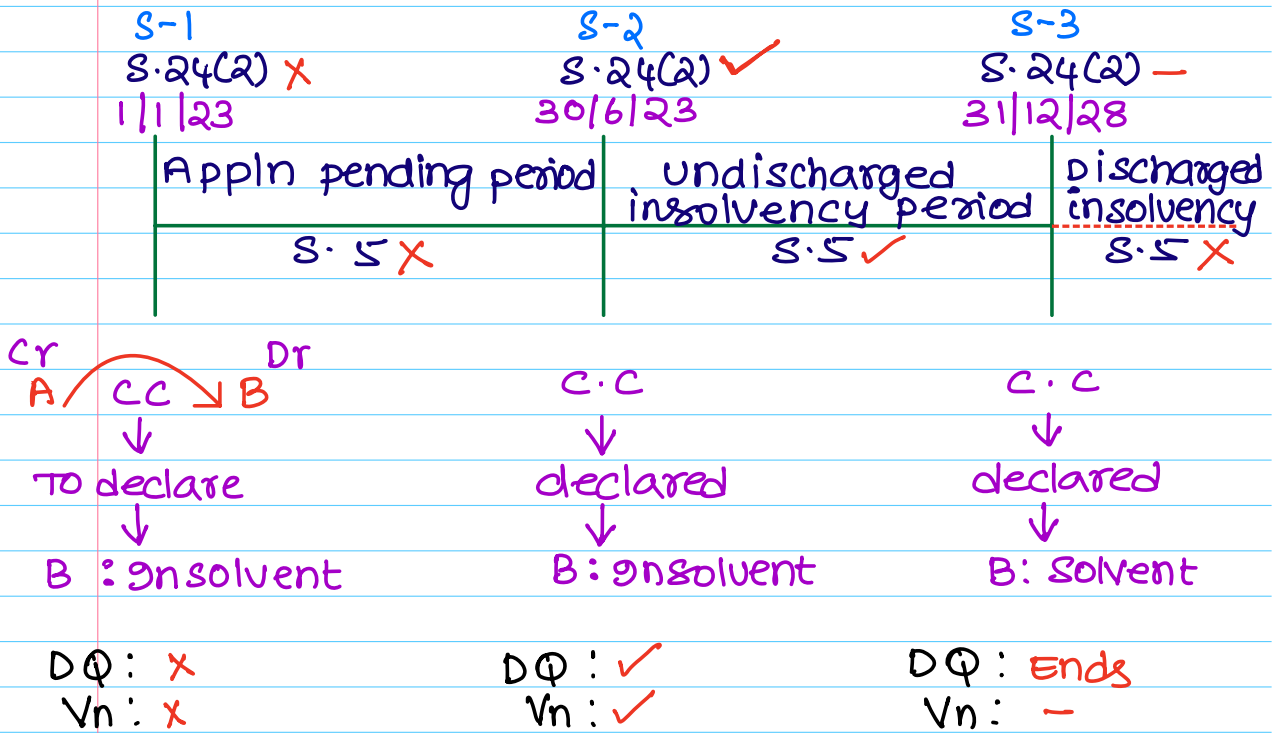


Stage Analysis

- S I * Need not cease as a partner in existing LLPs.
- S II * Cease as a partner in all the existing LLPs.
- S III * Not applicable

- S I - S II * Can become a partner in a new LLP
- S II - S II * cannot become a partner in a new LLP
- S I - S III * No common event occurrence, hence, cant analyse.

Timeline chart - 2 : Undischarged insolvency

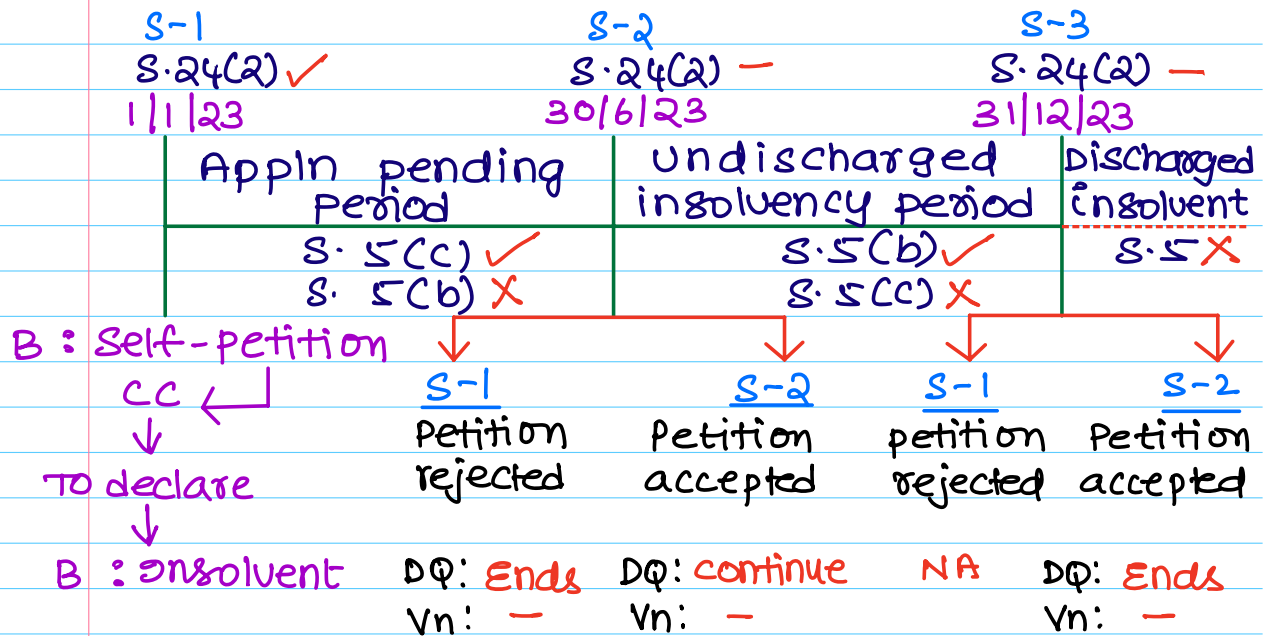


Stage

Analysis

- | | |
|--------------|--|
| S I | * Need not cease as a partner in existing LLPs. |
| S II | * Cease as a partner in all the existing LLPs. |
| S III | * Not applicable |
| S I - S II | * Can become a partner in a new LLP |
| S II - S III | * cannot become a partner in a new LLP |
| S I - S III | * No common event occurrence, hence, cant analyse. |

Timeline Chart - 3: Self-petition for insolvency



DQ: ✓

Vn: ✓

Stage

Analysis

S I	cease as a partner in all existing LLPs.
S II	Not applicable
S III	Not applicable
S I - S II	Disqualified & cannot become a partner in any LLP.
S II - S III	court accepted: DQ continue court rejected: can become a partner.
S I - S III	court accepted: DQ period court rejected: Not applicable.

Pre-incorporation Provisions

Reservation of name of LLP
[Section 16]

Concepts covering name of an LLP
[Section 15]

who can apply?
Any person

Form? Fee?
e-form ₹1,000 per application

Subfix of LLP name

Prefix of LLP name

Validity period

3m

Purpose
to reserve name of LLP

Apply to whom?
ROC

Last words of name shall contain

(cor)

Limited Liability Partnership

Acronym LLP

Before reserving the name, ROC shall verify the compliance of rules and conditions that are mentioned in section 15(2).

Name of an LLP, in the opinion of CG should not be

Undesirable

(cor)

similar/identical/
too nearly resemble to
the name of company,
LLP (or) regd Trademark

(A)

IMPORTANT

change of name of LLP (Section 17)

Basic provision

Section 17 gets attracted if the LLP is incorporated with a name which is similar/identical (or) too nearly resemble to the name of LLP/company/ regd tm (By inadvertence)

What is, the section is attracted?

The LLP/ company/ proprietor of regd tm may apply to C.G for change in name of that LLP.

Directions of C.G

Upon application, C.G shall direct the LLP to change its name within a period of 3 months from directions issued.

(ignoring S. 15 & 16)

Duty of LLP

LLP has to give of such change to ROC within 15 days of such along with order of C.G & ROC will issue a fresh COI in new name and within 30 days of issue of fresh COI, make change in LLP agreement

If applicant is LLP/Co.

No time limit mentioned

If applicant is proprietor of a regd tm.

Apply to C.G within 3 years from date of incorporation of LLP with that name/change in the name of LLP to that name.

consequences of noncompliance

Step 1: C.G allots a new name

Step 2: C.G intimates ROC of the change

Step 3: ROC makes necessary changes

Step 4: ROC issue a fresh COI.

Note: LLP may subsequently change its name by complying with provisions of section 16.

Registered office and Effect of regn (Section 13 and 14)

Registered office of LLP (Sec. 13)

Effect of regn of LLP (Sec. 14)

Need for R.O.

- * R.O. is the place of communication
- * Any notice / communication which is required to be served on LLP, shall be delivered to the R.O.

Notice to whom?

- * Notice to LLP / DP / any partner shall be addressed to R.O of the LLP.

An LLP, once registered will get the following features —

1. It can do all the acts and things like a Body corporate
2. Capacity to sue and capacity to be sued.
3. Possess its own common seal.

Consequence of default

- penalty ₹500/p.d - min
- ₹ 50,000 - max
- By both LLP and partners.

How to send a notice / comm.?

- * Post with certificate of posting (or)
- * Regd. post (or)
- * Any other means.

4. Hold, acquire, dispose, develop any property whether —
 - * movable / immovable
 - * Tangible / Intangible.



FINANCIAL DISCLOSURES

maintanance of Books, SOA etc (S.34)

Annual return (S.35)

1. maintainance of Books

2. Preparation of SOA & solvency

- * Cash/Accrual basis.
- * Double entry system of accounting
- * maintained at R.O of LLP.

Every LLP shall prepare a SOA and solvency wrt the financial year within 6ms from the closure of financial year.

4. mandatory Audit

3. filing of SOA

Every LLP shall get its BOA audited as per the rules prescribed.

Every LLP shall file SOA & solvency within prescribed time with ROC.

Every LLP shall file with ROC an Annual return wrt the financial year within 60 days from the closure of financial year.

consequence of contravention

Penalty

min: ₹100/day on LLP + DPs.

max

LLP: ₹1,00,000

DPs: ₹ 50,000

C.G to prescribe Accounting and Audit Standards (S.34A)

consequences of contravention

for case 3:

Penalty

min: ₹100perday on LLP + DPs.

max:

LLP: ₹1,00,000

DPs: ₹ 50,000

For cases 1,2,4:

Fine

on LLP

min: ₹25,000

max: ₹5,00,000

on DP

min: ₹10,000

max: ₹1,00,000

S1

Drafting and recommendation by ICAI

S2

Review by NFRA

S3

mCACC.G) in the consultation of NFRA prescribed standards.

LLP v/s OTHER BUSINESSES

A. LLP v/s Company

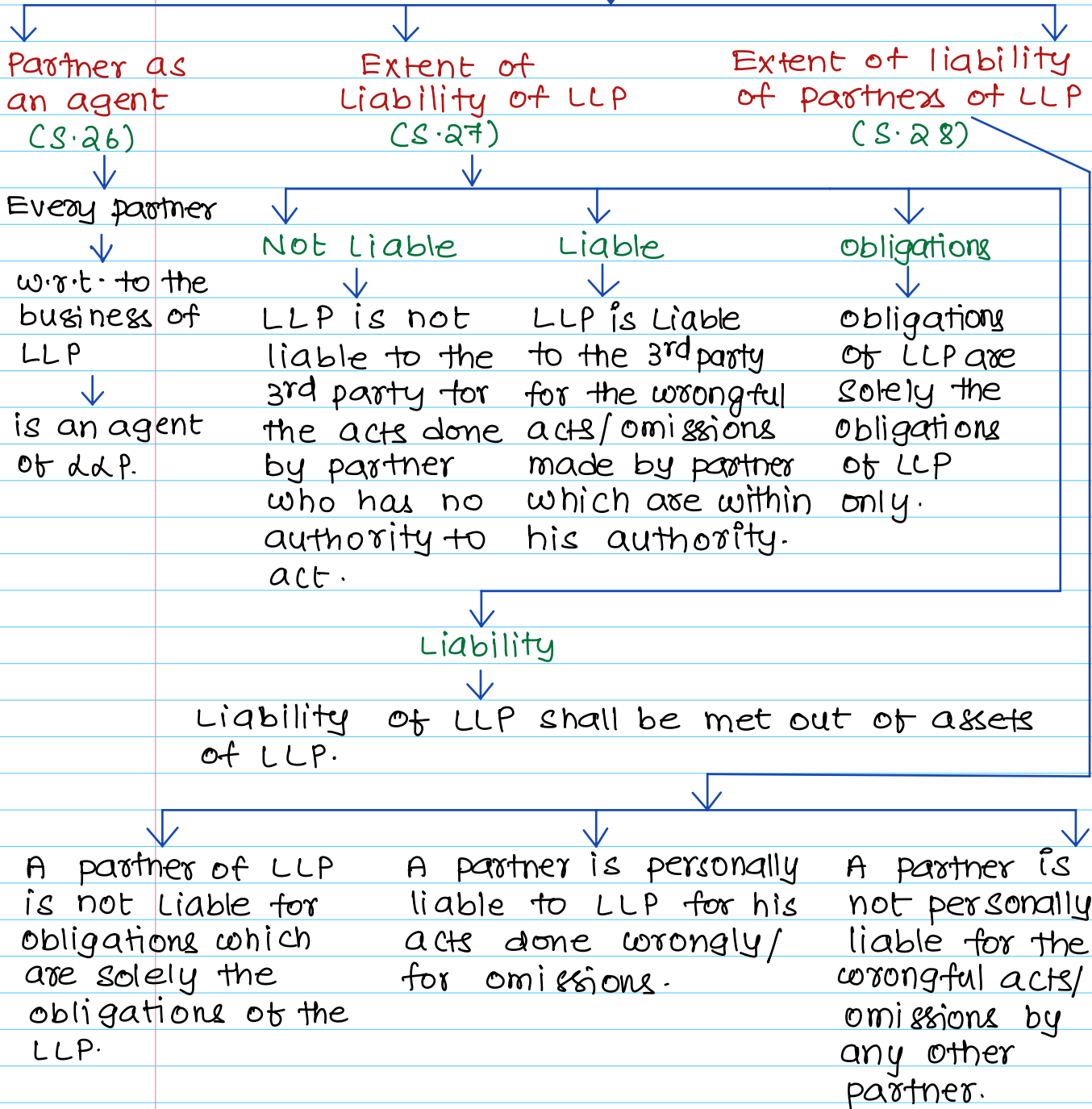
Point of difference	LLP	Company
1. Regulatory Act	The Limited Liability Partnership Act, 2008	The Companies Act, 2013.
2. Contributors	Persons who contribute to capital of LLP are called as "Partners".	Persons who invest money in the shares of company are called "members".
3. Internal governance	Internal governance of LLP is regulated by the LLP agreement.	Internal governance of a company is regulated by CA 2013.
4. Name regulations	Use at the end of the name the phrase "LLP" (or) "Limited Liability Partnership".	Use at the end of name Pvt Co - Pvt Ltd Pub Co - Ltd
5. min & max members / partners	min partners : 2 max Partners : Not defined	min members Pvt Co : 2 ; Pub Co : 7 max members Pvt Co : 200 ; Pub Co : -
6. Mgt of business	By partners and DPs.	By BOD
7. max DPs / Directors	min DPs : 2	Pvt Co min Directors = 2 max Directors = 15 Public Co min Directors = 3 max Directors = 15
8. Liability of partners / members.	Liability of partners is limited to the extent of amount unpaid / amount intended to contributed towards capital.	Liability of members is limited to the extent of amount unpaid on shares.

B. LLP v/s Partnership

Point of difference	LLP	Partnership
1. Regulatory Act	Limited Liability Partnership Act, 2008	Indian Partnership Act, 1932
2. Body corporate	LLP is a Body corporate with corporate features	Partnership is not a Body corporate.
3. Seperate Legal entity	LLP is a seperate legal entity.	P. ship is not a seperate legal entity.
4. Creation	Created by legal process.	Created by agreement.
5. Registration	LLP is created by regn.	P. ship regn is optional.
6. Perpetual Succession	Death, insanity etc of partners donot affect the LLP.	Death, insanity etc of partners will lead to the dissolution of P. ship
7. Name	Suffix - LLP (or) Limited Liability partnership	No name specifications
8. Liability	Liability limited to the extent of capital intended to be contributed.	Liability is unlimited and extends to personal assets of partners.
9. Designated Partners	DPs will be liable for all legal compliances.	All partners are liable for legal compliances.
10. minor as a partner	* cannot be a partner & * cannot be admitted for benefits of LLP.	* minor cannot be a partner but * can be admitted for benefits of P. ship.

Part I

LIABILITIES OF LLP & PARTNER



LIABILITIES OF PARTNERS (Part-II)

Partner by Holding out (Sec 29)

unlimited liability in case of fraud (Sec. 30)

whistle blower (S. 31)

conditions attracting the section when LLP is liable?
LLP is liable if money is used by it.

A person is representing himself as a partner (in fact he is not)
(or)

A person knowingly permits others to represent him as a partner

Then, such person shall be liable to any person who on faith of such representation gave credit to LLP.

1. Court/Tribunal may waive the penalty (or) reduce the penalty to any of partner who gave information for conduct of the investigation.

2. Protection against
* Discharge
* Dismissal
* Suspension
* termination etc.

When section get attracted?

consequence for contravention

(or)
where the acts of LLP are with an intent to defraud creditors/ any other person

When acts are done with a fraudulent purpose.

Liability nature
Liability of LLP & partners will become unlimited.

punish
Imp: Sy and
min = ₹50,000 fine
max fine = ₹5,00,000.

compen
-sate to those who suffered loss.

INC OF LLP (Sec 11 & Sec 12)

Procedure

Step 1:

AOP $\xrightarrow{\text{eform 1}}$ ROC
for name reservation

Step 2:

AOP $\xrightarrow{\text{To inc LLP}}$ ROC

(lawful business)

Step 3:

AOP $\xrightarrow{\text{eform 2 inc.doc}}$ ROC

(subscribing to the LLP)

Step 4:

Incdoc + Statement

↓
made by CA/CMA/CS

↓
that incorporation is made as per the Act, rules etc.

Contents of ID

- * It shall be in e-form 2
- * Name of LLP
- * Objects
- * Regd. office details.
- * Name + address of a partner
- * Name + address of DPs.

consequence of contravention

Any info is filed knowing it to be false ↓ then

- a) Imp = max 2yrs
- b) Fine
min = ₹10,000
max ₹5,00,000

Incorporation by registration

- * once ROC is satisfied with the compliance of step 1 & step 3, 4 as aforesaid he shall —
- * Register the ID
- (+) * Issue the COI of LLP.

- * COI is issued under common seal
- * COI is said to be conclusive evidence.

Conversions, Foreign LLP & Dissolution

