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INTRODUCTION

- * Parliament passed LLP Bill = 12.12.2008
- * President assented the Bill = 07.01.2009
- * Ministry of Law & Justice notified the Act = 09.01.2009

THE LIMITED LIABILITY PARTNERSHIP ACT, 2008:

- * There are 81 sections & 4 schedules (sec 81 is omitted)
- * 1st schedule => Mutual rights and duties of partners and LLP.
- * 2nd schedule => Conversion of firm into LLP.
- * 3rd schedule => Conversion of private company into LLP.
- * 4th schedule => Conversion of unlisted public company into LLP.
- * MCA & ROC administers the LLP Act, 2008.
- * CG frame rules & amend them by notification.
- * Recently amended through LLP (Amendment) Act, 2021 dated 13.08.2021.

MEANING OF LIMITED LIABILITY PARTNERSHIP :

- * New form of legal business entity with limited liability.
- * Gives benefits of limited liability of a company & flexibility of partnership.
- * Hybrid between company & partnership.

DEFINITIONS:

1, ADDRESS [SEC 2(1)(a)]:

- * Individual = Usual residential address.
- * Body corporate = Address of its registered office.

2, BODY CORPORATE [SEC 2(1)(d)]:

* Includes:

- i, Company
- ii, Foreign company
- iii, LLP
- iv, Foreign LLP

* Excludes:

- i, Sole-proprietor
- ii, Co-operative society.
- iii, Any others notified by CG.

3, BUSINESS [SEC 2(1)(e)]:

- * Includes every trade, profession, service and occupation.
- * Excludes CG notified activities.

4, CHARTERED ACCOUNTANT [SEC 2(1)(f)]:

- * CA as defined in section 2(1)(b) of Chartered Accountants Act, 1949 & obtained COP u/s 6(1) of that Act.

5, DESIGNATED PARTNER [SECTION 2(1)(j)]:

* Any partner designated as such pursuant to

section 7.

6, ENTITY [SECTION 2(1)(k)]:

* Body corporate and firm.

7, FINANCIAL YEAR [SEC 2(1)(l)]:

* Period from 1st April of a year to 31st March of the following year.

* For LLP incorporated after 30th September of a year, FY may end on 31st March of the next following year.

8, FOREIGN LLP [SEC 2(1)(m)]:

* LLP formed, incorporated or registered outside India &

* Establishes a place of business within India.

9, LIMITED LIABILITY PARTNERSHIP [SEC 2(1)(n)]:

* Partnership formed & registered under LLP Act.

10, LIMITED LIABILITY PARTNERSHIP AGREEMENT [SEC 2(1)(o)]:

* Written agreement between the partners of the

LLP or between the LLP & its partners.

* Determines the mutual rights & duties of the partners & their rights & duties in relation to that LLP.

11, NAME [SEC 2(1)(p)]:

* Individual \Rightarrow Forename, middle name & surname.

* Body corporate \Rightarrow Registered name.

12, PARTNER [SEC 2(1)(q)]:

* Any person who becomes a partner in the LLP i.a.w LLP agreement.

13, REGIONAL DIRECTOR [SEC 2(1)(ya)]:

* Person appointed as regional director by CG.

14, REGISTRAR [SEC 2(1)(s)]:

* Person appointed as Registrar, Additional Registrar, Joint Registrar, Deputy Registrar or Assistant Registrar by CG.

15, SMALL LIMITED LIABILITY PARTNERSHIP [SEC 2(1)(ta)]:

* Contribution $< 25L$ (Maximum 5C) &

* Turnover $< 40L$ (Maximum 50C), or

* Fulfills prescribed terms & conditions.

16. TRIBUNAL [SEC 2(1)(u)]:

- * National Company Law Tribunal constituted U/s 408 of Companies Act, 2013.

CHARACTERISTICS OF LLP:

- * Body corporate
- * Perpetual Succession
- * Separate legal entity
- * Artificial legal person
- * Invisible, intangible & immortal.
- * Not fictitious
- * Mutual agency (Every partner is agent of LLP; but not of other partners)
- * LLP Agreement.
- * Common seal (Not mandatory; affixed in the presence of at least 2 DP)
- * Limited liability.
- * Minimum 2 partners & 2 DP.
- * Business for profit only.
- * All partners are entitled to manage the business.
- * Only DPs are responsible for legal compliances.
- * CG has powers to investigate the affairs of an LLP by appointment of competent authority.

* E-Filing of document

* Compromise & arrangements should be i.a.w the provisions of the Act.

* Firm, private company or unlisted public company can be converted into LLP

* Foreign LLP can become a partner in a Indian LLP.

ADVANTAGES OF LLP FORM:

* Organised & operates on the basis of an agreement.

* Provides flexibility.

* No detailed legal and procedural requirements.

* Easy to form

* Limited liability of partners.

* Easy to dissolve.

2. PARTNERS [SEC 5]:

* Any individual or body corporate may be a partner in a LLP.

* Except, individual who is:

⇒ of unsound mind.

⇒ undischarged insolvent.

⇒ applied to be adjudicated as an insolvent & his application is pending.

NOTE: FDI compliances should be undertaken by LLP, if FDI is made in the introduction of capital / acquisition of existing stake in LLP by non-resident (except NRIs & OCIs investing on a repatriation basis).

MINIMUM NUMBER OF PARTNERS [SEC 6]:

- * Every LLP shall have at least 2 partners.
- * No. of partners < 2 & carries on business for more than 6 months => Person, who is the only partner of the LLP during that time & has the knowledge of the fact shall be liable personally for the obligations incurred during that period.

DESIGNATED PARTNERS [SEC 7]:

- (1) * Every LLP shall have at least 2 DP
- * At least one of them shall be a resident in India.
 - * DP should be individual or nominee of BC.
 - * Resident in India => Period of stay in India > 120 days.

3. INCORPORATION OF LLP:

INCORPORATION DOCUMENT [SEC II]:

* 2 or more persons associated for carrying on lawful business to earn profit should subscribe their names to ID.

* ID shall be filed with Registrar of State in a prescribed manner & with prescribed fees.

* A statement that all requirements of this Act & rules are complied with i.r.o incorporation & matters precedent & incidental thereto shall be filed along with ID.

* Statement should be made by:

i) An advocate / CA / CMA / CS engaged in formation of

LLP &

ii) Anyone who subscribed his name to ID.

* ID shall be in a prescribed form.

* ID shall state:

i) Name of LLP

ii) Proposed business of LLP

iii) Address of registered office of LLP

iv) Name & address of each partners & DP.

* Penalty for false declaration:

⇒ Impersonment (Maximum 2 years)

⇒ Fine > 10,000 (Maximum 5L)

INCORPORATION BY REGISTRATION [SEC 12]:

- * If ID & a statement has filed with registrar, he shall retain the ID.
- * If 2 or more persons subscribes their name to ID within 14 days, he shall:
 - ⇒ register the incorporation document &
 - ⇒ give a certificate of incorporation.
- * Registrar may accept the statement as sufficient evidence that 2 or more persons had subscribed their names.
- * Certificate shall be signed by Registrar & authenticated by his official seal.
- * Certificate shall be conclusive evidence that LLP is incorporated by the name specified therein.

REGISTERED OFFICE OF LLP AND CHANGE THEREIN [SEC 13]:

- * Every LLP have a registered office.
- * Communications & notices are addressed & received in registered office.
- * A document shall be delivered to a LLP or a partner or a DP by sending it by post at the registered office.
- * LLP may change the place of registered office by filing notice of change with Registrar.

* Penalty for contravention :

⇒ LLP & its every partner = ₹500 per day (Maximum 50k)

EFFECT OF REGISTRATION [SEC 14]:

* On registration, LLP shall be capable of :

⇒ Suing & being sued

⇒ Acquired, developing or disposing of property

⇒ Having a common seal

⇒ Doing & suffering other acts & things as bodies

corporate may lawfully do & suffer.

NAME [SEC 15]:

* Every LLP shall have the words 'Limited Liability Partnership' or 'LLP' as last words of its name.

* Name should not be undesirable or identical in CG opinion.

RESERVATION OF NAME [SEC 16]:

* A person may apply for reservation of name (name of a proposed LLP or name to which LLP proposes to change its name) to the Registrar with prescribed fees.

* Registrar shall reserve the name for a period of 3 months from the date of intimation by the Registrar, if he is satisfied that name to be reserved doesn't contravene sec 15

RECTIFICATION OF NAME OF LLP [SEC 17]:

- * If LLP is registered by a name which is identical with that of any other LLP/company/registered trademark of a proprietor & the concerned person has made an application, CG may direct the LLP to change its name within 3 months.
- * Application of proprietor of registered trademarks shall be maintainable for 3 years from the date of incorporation/registration/change of name.
- * If LLP changes its name, it shall give notice of change to Registrar along with CG order within 15 days from date of change.
- * Registrar shall change in certificate of incorporation.
- * LLP shall change the name in LLP agreement within 30 days of change in certificate of incorporation.
- * In case of default by LLP in changing the name, CG shall allot a new name & Registrar shall enter the new name in the Register of LLP & issue a fresh certificate of incorporation.
- * LLP can change its name subsequently.

DIFFERENT BETWEEN LLP AND PARTNERSHIP FIRMS:

BASIS	LLP	PARTNERSHIP FIRM
REGULATING ACT	* The Limited Liability Partnership Act, 2008.	* The Indian Partnership Act,
BODY CORPORATE	* It is a body corporate	* It is not a body corporate.
SEPARATE LEGAL ENTITY	* It is a legal entity separate from its members.	* It is a group of persons with no separate legal entity.
CREATION	* Created by a legal process called registration under the LLP Act, 2008	* Created by an agreement between the partners.
REGISTRATION	* Mandatory.	* Voluntary.
SUING	* LLP can sue and be sued in its own name.	* Only the registered partnership firms can sue third parties.

PERPETUAL SUCCESSION	* It has perpetual succession	* It has no perpetual succession
NAME	* Name of the LLP to contain the word limited liability partners (LLP) as suffix.	* No guidelines.
LIABILITY	* Liability to the extent of agreed contribution except in case of willful fraud	* Unlimited liability. Extended up to the personal assets of the partners.
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 partner by his own acts.
DESIGNATED PARTNERS	* At least two DP & at least one of them shall be resident in India	* No provision for such partners under the Partnership Act, 1932.

COMMON SEAL	* It may have its common seal as its official signatures.	* There is no such concept in partnership.
LEGAL COMPLIANCES	* Only designated partners are responsible	* All partners are responsible.
ANNUAL FILING OF DOCUMENTS	* Statement of accounts and solvency (to be filed annually) * Annual return with registration of LLP every year.	* Not required to file any annual document with the registrar of firms.
FOREIGN PARTNERSHIP	* Foreign nationals can become a partner in a LLP	* Foreign nationals cannot become a partner in a partnership firm.
MINOR AS PARTNERS	* Minor cannot be admitted to the benefits of the LLP.	* Minor can be admitted to the benefits of the partnership with prior consent of partners.

DISTINCTION BETWEEN LLP AND LIMITED LIABILITY COMPANY:

BASIS	LLP	LIMITED LIABILITY COMPANY
REGULATING ACT	* The LLP Act, 2008	* The Companies Act, 2013.
MEMBERS / PARTNERS	* Persons who contribute to LLP are partners	* Persons who invest money in shares are members.
INTERNAL GOVERNANCE STRUCTURE	* Governed by contract agreement between the partners.	* Regulated by statute.
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

<p>No. OF MEMBERS/ PARTNERS</p>	<ul style="list-style-type: none"> * Minimum - 2 * Maximum - No limit * Members can be individuals / or body corporate through the nominees. 	<ul style="list-style-type: none"> * Private company : <ul style="list-style-type: none"> => Minimum = 2 => Maximum = 200 * Public company : <ul style="list-style-type: none"> => Minimum = 7 => Maximum = No limit * Members can be organisations, trusts, another business form or individuals.
<p>LIABILITY</p>	<ul style="list-style-type: none"> * Limited to the extent of agreed contribution except in case of intention is fraud. 	<ul style="list-style-type: none"> * Limited to the amount unpaid on the shares held by them.
	<ul style="list-style-type: none"> * Managed by the partners including DP. 	<ul style="list-style-type: none"> * Managed by BOD elected by the shareholders.
<p>MINIMUM No. OF DP / DIRECTORS</p>	<ul style="list-style-type: none"> * Minimum 2 designated partners. 	<ul style="list-style-type: none"> * Pvt. Co - 2 directors * Public Co - 3 directors.