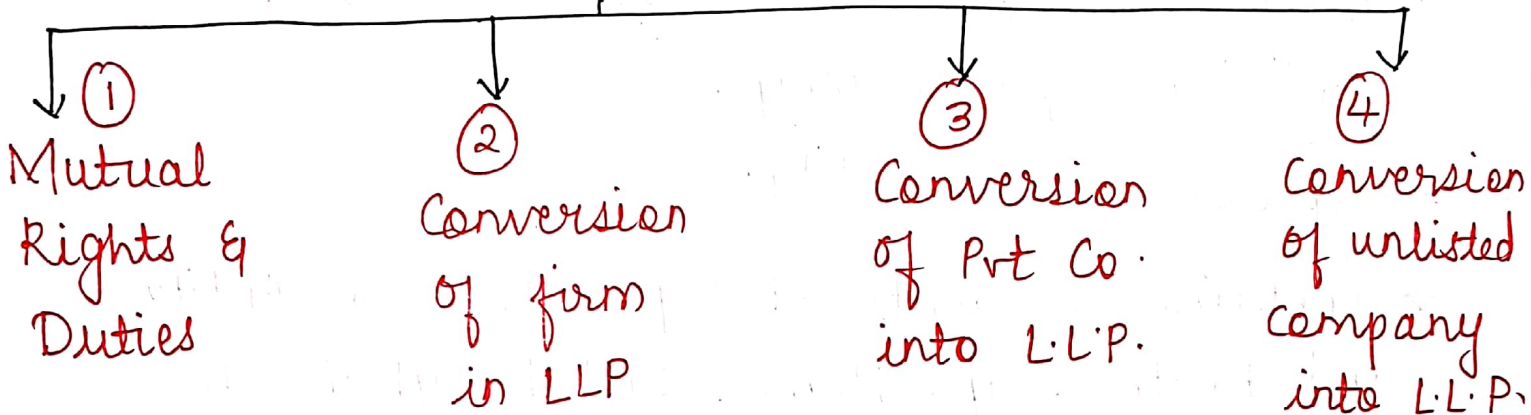


Limited Liability Partnership Act, 2008

LLP Act, 2008

81 Sections

4 Schedules (list)



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* Meaning & Concept

Company

Features:-

- Limited liability
- Perpetual Succession
- Separate legal entity

Partnership

Unlimited

X

X

→ LLP

* Meaning

- New form of legal business with limited liability.
- Alternative corporate business form.
- Allows its partners flexibility in a traditional partnership.
- Separate legal entity.
- Contains elements of Separate legal Entity and Partnership. Hence, called hybrid of both.

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* Body Corporate includes :-

- (i) LLP under this Act.
- (ii) LLP outside this Act.
- (iii) Company incorporated outside India.

* Does not include :-

- (i) Corporation sole.
- (ii) Co-operative Society.
- (iii) Other Companies notified by Govt.

* L.L.P Agreement

Non - applicability of Partnership Act, 1932.

Who can become partner ? of LLP?

- Individual
or
- Body Corporate.

Who cannot ?

- unsound mind
- undischarged insolvent → insolvent but not discharged by court
- Applied to be declared as insolvent but application is pending.

* Minimum number of Partners [Sec 6]

- At least two partners.
- If anytime number of partners below 2 and more than 6 month lapsed. Lone partner shall be liable. LLP can be dissolved.

* Designated Partner

- Every LLP shall have atleast 2 D.P.

Who are INDIVIDUALS, out of which one should be resident (India)

* Characteristics

- ① LLP is a body corporate.
- ② Perpetual Succession
- ③ Separate Legal Entity
- ④ Mutual Agency
 - Partners will be the agents of LLP alone
 - No Partner can bind other Partner.
- ⑤ Artificial legal person.
- ⑥ Common seal. (optional as in co.)
- ⑦ Limited liability
- ⑧ Management of business. (D.P.)
- ⑨ Minimum & Maximum partners.
- ⑩ Business for Profit only.

* Advantages

- ① Organised and operates on the basis of agreement.
- ② Provides flexibility and no detailed legal and procedural requirements.
- ③ Easy to form.
- ④ All partners enjoy limited liability.
- ⑤ Easy to dissolve.

* Incorporated of LLP [sec 11]

(1) Requirements

- (a) Two or more person → Lawful business
Subscribe name to an incorporation document.
- (b) Incorporation document filed such ~~man~~ manner,
such fees — prescribed.
- (c) Statement to be filed
- Prescribed form
 - Made by either
 - Advocate
 - CS or CA or CWA/CMA
- Engaged in formation of LLP
and
Anyone who subscribed his
name to incorporation document is complied.
- All requirement of this Act and rules for
incorporation is complied.

(2) Incorporation document shall

- (a) in forms as prescribed.
- (b) State name of LLP
- (c) State proposed business.

(d) State address of registered office.

(e) Name & address of each Partners and D.P.

(3) Person making statement as discussed above which he :-

(a) Knows to be false

(b) Does not believe to be true

Punishable

→ Imprisonment → upto 2 years
and

→ Fine → not less than

₹ 10,000 and upto
₹ 5,00,000

* Incorporation by Registration [Section 12]

(1) On fulfillment of requirement of Sec 11 Registrar retain incorporation document and shall within a period of 14 days

(a) Register the incorporation document.

(b) Give a certificate in name of LLP.

(2) Sufficient evidence → that requirements are complied.

(3) Certificate → Authenticated by his Office Seal.

(4) Conclusive evidence → certificate

* Registered Office and Changes :- [Sec 13]

- ① Every LLP must Registered office for all correspondence.
- ② LLP may change the place in accordance with LLP Act.
- ③ LLP contravenes → this section
Fine → not less than ₹ 2,000 upto ₹ 25,000

* Effect of Registration [Sec 14]

- Suing and being sued
- Acquire, own, hold and develop or dispose property.
- Have a common seal.

* Name [Sec 15]

- ① Every LLP → Have words either
 - Limited liability Partnership.
 - LLP.

(2) ^[Sub sec 2] LLP cannot be registered with name.

(a) Undesirable

(b) Identical or too nearly resembles with name of other firm or LLP or body corporate or registered trademark or trademark.

* Reservation of Name [Sec 16]

(1) A person may apply to Registrar for
→ Reservation of name of proposed LLP.
→ Change the name of LLP.

(2) Registrar on satisfaction that Sub Sec(2) of Sec 15 is complied with
→ Reserve the name for a period of 3 months from date of intimation by Registrar.

* Change of name of LLP [Sec 17]

(1) ~~Not~~ Notwithstanding anything contained in sections 15 and 16.

- If C.G satisfied that LLP is registered with name referred in Sub Sec 2 of Sec 15.
- C.G may direct such LLP to change its name.

- LLP shall comply with such direction within 3 months after date of direction or longer period as prescribed by C.G.

(2) If LLP fails

Punishment → Not less than 10K
Max = 25K.

* Steps to Incorporate LLP

Name Reservation → First Step

Applicant has to file e-form 1 for availability and Reservation of LLP's name.

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Incorporate LLP → Second Step

Applicant has to file e-form 2 for incorporating New LLP.

Contents of this same is almost same as statement.

LLP Agreement → Third Step

To be filed with Registrar in e-form 3 within 30 days of incorporation of LLP.

* Partners & their Relations

(1) Mutual rights and duties of

- Partners of LLP, and
- LLP and its partners
- Governed by LLP Agreement.

(2) Any changes in mutual rights and duties shall be filed with Registrar.

(3) In the absence of agreement

↓
Partnership shall be governed by provisions contained in first schedule.

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* Cessation of Partnership Interest [Sec 24]

① In accordance with agreement with other partner.

In absence of agreement by giving notice ^{in writing} of not less than 30 days of intention to resign as partner.

② (a) On his death.

(b) Declared unsound mind by competent court.

(c) Applied to be adjudicated as insolvent or declared insolvent.

③ Former Partner / Ceased Partner still be regarded as Partner of LLP until

(a) Notice is given.

(b) Notice is delivered to Registrar.

④ Past obligation will not be affected by cessation of Partner.

⑤ In case of death or insolvency of former partner

→ Former partner or any person entitled to received.

→ Amount equal to the contribution of former partner actually made.

→ Share in accumulated profit after deducting accumulated loss.

* Registration of Changes in Partners [Sec 25]

① Every Partner inform LLP [sub sec 1]
→ any change in his name or address.
→ within a period of 15 days of change

② LLP shall [sub sec 2]

(a) Where

- Person become partner
or
- Ceases to be a partner

→ File notice with ROC within
30 days of such event

(b) When change in address of partner
(same provisions as above).

③ (a) Prescribed form or fees.

(b) Signed by D.P and authenticated
as prescribed.

(c) If notice relates to incoming partner →
→ consent of partner → signed and
authenticated

④ If LLP contravenes. Sub sec(2) ←
LLP and every ~~other~~ designated partner
→ Fine not less than 2K
→ Max - 25K

⑤ If Partner contravenes Sub Sec (1)
(same provisions as above)

(6) Partner may himself file notice if he has reasonable cause to believe that LLP may not file the notice

In such case

ROC shall take confirmation of ~~an~~ same from LLP

Note :- No confirmation within 15 days → Registrar shall register notice

* Extent and Limitation of Liability of LLP and Partners

Partner as agent

Extent of liability of LLP

- ① LLP not bound by act of Partner if
- (a) Partner has no authority to act.
 - (b) Third person knows that partner has no authority

OR

does not know whether he is dealing with partner.

- ② LLP liable for act of Partner if it.
→ is within his authority.
→ is in ordinary course of business.

③ An obligation of LLP is solely the obligation of LLP.

④ Liabilities of LLP shall be met out of property of LLP.

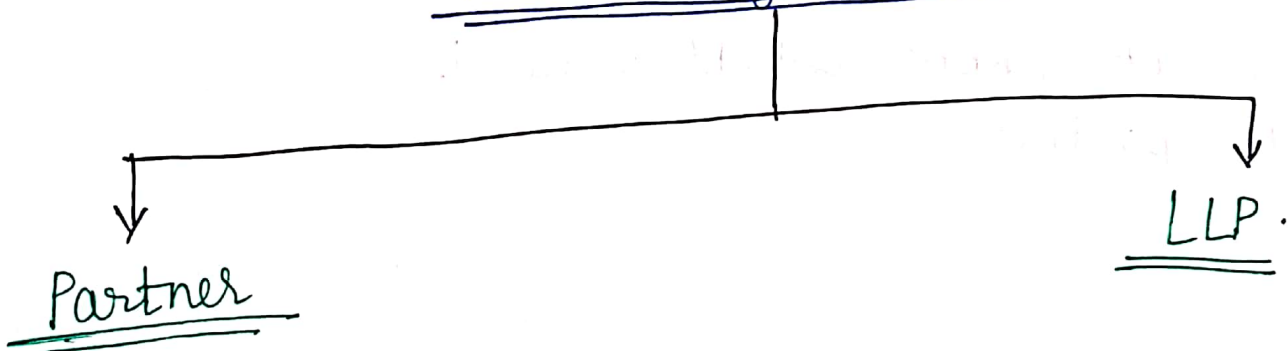
Extent of liability of Partner [sec 28]

① A Partner is not personally liable for obligation of LLP.

② But a partner is personally liable for his wrongful act or omission done outside his authority.

③ Partner not liable for act of any other partner.

Partner by Holding Out



*imp * Holding Out [Sec 29]

① Any person who

- by any manner written/oral
- represents himself or knowingly permits himself to be represented as partner in LLP
- is liable to any person natural/artificial
- who on such faith given credit to firm.

Note :-

If credit is received by LLP. Both, the partner by estoppel/holding out as well as LLP is liable for the credit or benefit arising from it.

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② Where after partner's death

- business is continued in the same LLP name
- continued use of firm's name or name of deceased partner will not make his legal representative liable.

* Unlimited liability in case of fraud [Sec 30]

(1) If the act is done by

→ LLP (implied to be D.P.)
or

→ by any partner (other partners besides D.P.)

* With intention

→ defraud creditors of LLP
or
any other person

→ for fraudulent purpose

The liability of such LLP and Partner shall be unlimited for all debts and liabilities.

Note :- If the act is done ^(in LLP agreement) without knowledge of authority of LLP, Partner alone is liable.

(2) If act is done as mentioned in Sub Section ~~(1)~~ (1)

→ Every person party to such act.

→ imprisonment → upto 2 years

→ fine → not less than 50K upto 5 lakh

(3) If LLP or partner or DP or employee of such LLP done some act in fraudulent manner

→ apart from criminal proceeding

→ They are liable to pay compensation to all those who suffered loss for such conduct.

Note :- LLP not liable if act is conducted without knowledge of LLP.

* ^{imp} Whistle Blowing [Sec 31]

(1) court or tribunal may

→ reduce or waive

→ any penalty

→ charged against any partner or employee of LLP.

If such Partner or Employee provided useful information for investigation of LLP.

(2) Partner or employee shall not be discharged, demoted, suspended, threatened, harassed or discriminated merely because he is providing information for such investigation.

* Winding Up and Dissolution

- (a) If LLP decides to be wound up by tribunal.
- (b) Number of partners reduced below 2 for more than 6 months.
- (c) LLP unable to pay its debt.
- (d) LLP acted against the sovereignty and integrity of India, security of state of public order.
- (e) Made default in filing with Registrar
→ State of A/c ~~of~~ solvency (5 consecutive fin. yr)
or
→ Annual returns for 5 consecutive financial years.
- (f) In the opinion of tribunal it is just and equitable to wound up LLP.