

## THE LIMITED LIABILITY PARTNERSHIP ACT, 2008

- The Ministry of Law and Justice on 9th January 2007 notified the LLP Act, 2008.
- The Parliament passed the LLP Bill on 12th December, 2008 and President has assented the Bill on 7th January, 2009
- It is applicable to the whole of India. It has 81 sections and 4 schedules.

<b>First Schedule</b>	Mutual rights and duties of partners, as well LLP and its partners in the absence of a formal agreement
<b>Second Schedule</b>	conversion of a firm into LLP.
<b>Third Schedule</b>	conversion of a private company into LLP
<b>Fourth Schedule</b>	conversion of unlisted public company into LLP.

### Need of new form of Limited Liability Partnership

- 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.
- LLP is a suitable vehicle for small enterprises and for investment by venture capital.

### Advantages of LLP form- LLP form is a form of business model which:

- is organized and operates on the basis of an agreement.
- provides flexibility without imposing detailed legal and procedural requirements.
- Easy to form
- All partners enjoy limited liability
- Flexible capital structure
- Easy to dissolve

## ❖ LIMITED LIABILITY PARTNERSHIP- MEANING AND CONCEPT

- A LLP is a new form of legal business entity with limited liability. 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.
- The provisions of the Indian Partnership Act, 1932 shall not apply to a LLP.

- Any individual or body corporate may be a partner in a LLP. However, an individual shall not be capable of becoming a partner if, he has been found to be of unsound mind by a competent Court; he is an undischarged insolvent; or he has applied to be adjudicated as an insolvent and his application is pending.
- Every LLP shall have **at least two partners**. 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, the only partner carrying the business after those six months shall be liable personally for the obligations of the LLP incurred during that period.

### Designated partners (Section 7):

1.
  - (i) Every LLP shall have at least two individual designated partners and at least one of them shall be a resident in India.
  - (ii) If in LLP, 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 LLP or nominees of such bodies corporate shall act as designated partners.
  - (iii) "Resident in India" means a person who has stayed in India for a period of not less than 120 days during the financial year.
2. if the incorporation document-
  - a. specifies who are to be designated partners, such persons shall be designated partners on incorporation
  - b. states that each of the partners from time to time of LLP is to be designated partner, every partner shall be a designated partner;
  - c. any partner may become a designated partner and may cease to be a designated partner in accordance with LLP agreement.
3. An individual shall not become a designated partner in any LLP unless he has given his prior consent to act as such to the LLP.
4. Every LLP shall file with the Registrar the particulars of every individual who has given his consent to act as designated partner in prescribed form 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 shall obtain a Designated Partners Identification Number (DPIN)

### Characteristic of LLP:

<ol style="list-style-type: none"><li>1. <b>LLP is a body corporate</b></li><li>2. <b>Perpetual Succession</b></li><li>3. <b>Separate Legal Entity</b></li><li>4. <b>Mutual Agency:</b> No partner is liable on account of the independent or un-authorized actions of other partners.</li><li>5. <b>LLP Agreement:</b> Mutual rights and duties of the partners are governed by an agreement between the partners.</li><li>6. <b>Artificial Legal Person:</b> A LLP is an artificial legal person because it is created by a legal process and is clothed with all rights of an individual.</li><li>7. <b>Common Seal:</b> LLP may 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.</li><li>8. <b>Limited Liability:</b> The liability of the partners will be limited to their agreed contribution.</li><li>9. <b>Management of Business:</b> The partners are entitled to manage the business, but only the designated partners are responsible for legal compliances.</li></ol>	<ol style="list-style-type: none"><li>10. <b>Minimum and Maximum number of Partners:</b> LLP shall have least 2 partners and 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.</li><li>11. <b>Business for Profit Only:</b> The essential requirement for forming LLP is carrying on a lawful business with a view to earn profit. Thus, it cannot be formed for charitable or non-economic purpose.</li><li>12. <b>Investigation:</b> The Central Government shall have powers to investigate the affairs of an LLP.</li><li>13. <b>Compromise or Arrangement:</b> Any compromise or agreements including merger and amalgamation of LLPs shall be in accordance with the provisions of the LLP Act, 2008.</li><li>14. <b>Conversion into LLP:</b> A firm, private company or an unlisted public company would be allowed to be converted into LLP</li><li>15. <b>E-Filing of Documents:</b> Every form or application shall be filed in computer readable electronic form on its website <a href="http://www.mca.gov.in">www.mca.gov.in</a> and authenticated by a partner or designated partner of LLP by the use of electronic or digital signature.</li><li>16. <b>Foreign LLPs:</b> foreign LLP is a LLP, incorporated, or registered outside India which established as place of business within India. Foreign LLP can become a partner in an Indian LLP.</li></ol>
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### ❖ INCORPORATION OF LLP

<ol style="list-style-type: none"><li>1. For a LLP to be incorporated:<ol style="list-style-type: none"><li>a) two or more persons</li><li>b) associated for carrying on a lawful business</li><li>c) with a view to profit shall subscribe their names to an incorporation document;</li><li>d) the incorporation document along with fees shall be filed with the Registrar of the State in which the registered office of the LLP is to be situated; and</li><li>e) Along with the incorporation document, a statement shall be filed in the prescribed form, made by either an advocate, or a CS or a CA or a CMA, who is engaged in the formation of the LLP and by any one subscriber, 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.</li></ol></li><li>2. The incorporation document shall—<ol style="list-style-type: none"><li>(a) be in a form as may be prescribed;</li><li>(b) state the name of the LLP;</li><li>(c) state the proposed business of the LLP;</li><li>(d) state the address of the registered office of the LLP;</li><li>(e) state the name and address of each of the persons who are to be partners of the LLP on incorporation;</li><li>(f) state the name and address of the persons who are to be designated partners of the LLP on incorporation;</li></ol></li></ol>	<ol style="list-style-type: none"><li>5. <b>Registered office of LLP and change therein (Section 13):</b> Every LLP shall have a registered office for receiving all communications and notices. A LLP may change the place of its registered office and file the notice of such change with the Registrar in the prescribed manner and any such change shall take effect only upon such filing. If any default is made in complying with requirements of this section, the LLP and its every partner shall be liable to a <b>penalty of Rs.500 for each day subject to maximum of Rs. 50,000.</b></li><li>6. <b>Effect of registration (Section 14):</b> On registration, a LLP shall, by its name, be capable of suing and being sued; acquiring, owning, holding and developing or disposing of property, whether movable or immovable, tangible or intangible having a common seal, if it decides to have one and doing and suffering such other acts and things as bodies corporate may lawfully do and suffer</li><li>7. <b>Name (Section 15):</b><ol style="list-style-type: none"><li>1. Every LLP shall have either the words "limited liability partnership" or the acronym "LLP" as the last words of its name.</li><li>2. No LLP shall be registered by a name which, in the opinion of the Central Government is—<ol style="list-style-type: none"><li>(a) undesirable; or</li><li>(b) identical or too nearly resembles to that of any other LLP or a company or a registered trade mark of any other person under the Trade Marks Act, 1999.</li></ol></li></ol></li><li>8. <b>Reservation of name (Section 16):</b><ol style="list-style-type: none"><li>1. A person may to the Registrar in prescribed form for the reservation of a name set out in the application as—<ol style="list-style-type: none"><li>(a) the name of a proposed LLP; or</li><li>(b) the name to which a LLP proposes to change its name.</li></ol></li><li>2. the Registrar may reserve the name for a period of 3 months from the date of intimation by the Registrar.</li></ol></li><li>9. <b>Change of name of LLP (Section 17):</b><ol style="list-style-type: none"><li>(1) if through inadvertence or otherwise, name of a LLP, is registered by a name which is identical with or too nearly resembles to any other LLP</li></ol></li></ol>
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<p>(g) contain such other information concerning the proposed LLP as may be prescribed.</p> <p>3. If a person makes a statement as discussed above which he knows to be false; or does not believe to be true, shall be punishable</p> <ul style="list-style-type: none"> <li>• imprisonment up to 2 years and</li> <li>• Fine-not be less than Rs. 10,000 but which may extend to Rs. 5 Lakhs.</li> </ul> <p>4. <b>Incorporation by registration (Section 12):</b></p> <p>The Registrar shall within a period of 14 days register the incorporation document and give a certificate that the LLP is incorporated by the name specified therein The certificate shall be signed by the Registrar and authenticated by his official seal and it shall be conclusive evidence that the LLP is incorporated by the name specified therein.</p>	<p>or a company; or 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 LLP or it's proprietor or a company, the Central Government may <b>direct that such LLP to change its name or new name</b> within a period of 3 months from the date of issue of such direction:</p> <p>However, an application of the proprietor of the registered trade marks shall be maintainable within a period of <b>3 years</b> from the date of incorporation or registration or change of name of the limited liability partnership under this Act.</p> <p>(2) LLP shall within a period of <b>15 days</b> 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 <b>30 days</b> of such change in the certificate of incorporation, such LLP shall change its name in the LLP agreement.</p> <p>(3) If the LLP is in default in complying with any direction, the Central Government shall allot a new name to the LLP and the Registrar shall enter the new name in the register of LLPs in place of the old name and issue a fresh certificate of incorporation with new name, which the LLP shall use thereafter: However, LLP can subsequently change its name in accordance with the provisions of section 16.</p>
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#### Steps to incorporate LLP-

1. **Name Reservation:** The first step to incorporate LLP is reservation of name of LLP. Applicant has to file e-Form 1, for ascertaining availability and reservation of the name of a LLP business.
2. **Incorporate LLP:** After reserving a name, user has to file e- Form 2 for incorporating a new Limited Liability Partnership (LLP). e-Form 2 contains the details of LLP proposed to be incorporated, partners/ designated partners' details and consent of the partners/designated partners to act as partners/ designated partners.
3. **LLP Agreement:** Execution of LLP Agreement is mandatory as per Section 23 of the Act. LLP Agreement is required to be filed with the registrar in e-Form 3 within 30 days of incorporation of LLP.

#### ❖ PARTNERS AND THEIR RELATIONS

1. **Eligibility to be partners (Section 22):** 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.
2. **Relationship of partners (Section 23):**
  - (i) The mutual rights and duties of a LLP and its partners shall be governed by the LLP agreement.
  - (ii) The LLP agreement and any changes, if any, made therein shall be filed with the Registrar as may be prescribed.
  - (iii) An agreement in writing made before the incorporation between the subscribers of LLP may impose obligations on the LLP, provided such agreement is ratified by all the partners after the incorporation of the LLP.
  - (iv) In the absence of agreement, the mutual rights and duties shall as per the provisions set-out in the First Schedule.

Cessation of partnership interest (Section 24):	Registration of changes in partners (Section 25):
<ol style="list-style-type: none"> <li>1. A person may cease to be a partner in accordance with an agreement, in the absence of agreement by giving a notice in writing of not less than 30 days.</li> <li>2. A person shall cease to be a partner of a LLP—               <ol style="list-style-type: none"> <li>a) on his death or dissolution of the LLP; or</li> <li>b) if he is declared to be of unsound mind by a competent court; or</li> <li>c) if he has applied to be adjudged as an insolvent or declared as an insolvent.</li> </ol> </li> <li>3. The former partner (the person who has ceased to be a partner) is to be regarded (in relation to any person dealing with the LLP) as still being a partner of the LLP unless—               <ol style="list-style-type: none"> <li>a) the person has notice that the former partner has ceased to be a partner of the LLP; or</li> <li>b) notice of cessation of partner has been delivered to the Registrar.</li> </ol> </li> <li>4. The cessation of a partner does not by itself discharge the partner from any obligation which he incurred while being a partner.</li> </ol>	<ol style="list-style-type: none"> <li>1. Every partner shall inform the LLP of any change in his name or address within a period of 15 days of such change.</li> <li>2. A LLP shall—               <ol style="list-style-type: none"> <li>a) where a person becomes or ceases to be a partner, file a notice with the Registrar <b>within 30 days</b> from the date he becomes or ceases to be a partner; and</li> <li>b) where there is any change in the name or address of a partner, file a notice with the Registrar <b>within 30 days</b> of such change.</li> </ol> </li> <li>3. A notice filed with the Registrar under sub-section (2)—               <ol style="list-style-type: none"> <li>a) shall be in such form as may be prescribed;</li> <li>b) shall be signed by the designated partner and authenticated in prescribed manner and</li> <li>c) if it relates to an incoming partner, shall contain his consent to becoming a partner, signed by him and authenticated in the manner as may be prescribed.</li> </ol> </li> </ol>

<p>5. 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—</p> <p>a) an amount equal to the capital contribution of the former partner; and</p> <p>b) his right to share in the accumulated profits of the LLP after the deduction of accumulated losses, determined as at the date cessation of the former partner.</p> <p>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.</p>	<p>4. If the LLP contravenes the provisions of sub-section (2), the LLP and its every designated partner shall be liable to a penalty of 10,000 rupees.</p> <p>5. If the contravention referred to in sub-section (1) is made by any partner of the LLP, such partner shall be liable to a penalty of 10,000 rupees.</p> <p>6. Any person who ceases to be a partner of a LLP may himself file notice with the Registrar if he has reasonable cause to believe that the LLP may not file the notice, the Registrar shall obtain a confirmation to this effect from the LLP. However, where no confirmation is given within 15 days, the registrar shall register the notice made by a person ceasing to be a partner under this section.</p>
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#### ❖ EXTENT AND LIMITATION OF LIABILITY OF LLP AND 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):	Extent of liability of partner (Section 28):
<p>(i) 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 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.</p> <p>(ii) The LLP is liable if a partner 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.</p> <p>(iii) An obligation of the LLP whether arising in contract or otherwise, shall be solely the obligation of the LLP.</p> <p>(iv) The liabilities of the LLP shall be met out of the property of the LLP.</p>	<p>A partner is not personally liable, directly or indirectly for an obligation solely by reason of being a partner of the LLP. The provisions of section 27 (3) and (1) of this section shall not affect the personal liability of a partner for his own wrongful act or omission, but he shall not be personally liable for the wrongful act or omission of any other partner.</p>

**Holding out (Section 29):** Any person, who 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 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 be liable to the extent of credit received by it or any financial benefit derived thereon. After a partner's death the continued use 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 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 shall be unlimited for all or any of the debts or other liabilities of the LLP.
2. 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.
3. every person who was knowingly a party to the carrying on of the business in the manner aforesaid shall be punishable with imprisonment up to 5 years and with fine of Min Rs. 50,000 up to Rs. 5 Lakhs.
4. 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 they 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.

**Whistle blowing (Section 31):** The Court or Tribunal may reduce or waive any penalty leviable against any partner or employee of a LLP, if it is satisfied that, he 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. 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).

## ❖ FINANCIAL DISCLOSURES

### **Maintenance of books of account, other records and audit, etc. (Section 34):**

- 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.

### **Accounting and auditing standards (Section 34A)**

The Central Government may, in consultation with the NFRA—

- (a) prescribe the standards of accounting; and
- (b) prescribe the standards of auditing, as recommended by the ICAI for a class or classes of limited liability partnerships

### **Annual return (Section 35):**

- Every LLP shall file an annual return duly authenticated with the Registrar within 60 days of closure of its financial year in the prescribed form.
- If any LLP fails to file its annual return before the expiry of the specified period, such LLP and its designated partners shall be liable to a penalty of **100 rupees for each day** during which such failure continues, subject to a **maximum of 1 lakh rupees for the LLP and 50,000 rupees for designated partners.**

### **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 and it shall be signed by the designated partners. **[Section 34(2)]**
- Every LLP shall file within the prescribed time, the Statement of Account and Solvency with the Registrar every year. **[Section 34(3)]**
- The accounts of LLP shall be audited in accordance with such rules as may be prescribed. **[Section 34(4)]**
- However, the Central Government may exempt any class or classes of LLP from the requirements of this sub-section.

Any LLP which fails to comply with the provisions of Section 34(3), such LLP and its designated partners shall be liable for to a penalty of **100 rupees for each day** during which such failure continues, subject to a maximum of **rupees 1 lakh for the LLP and rupees 50 thousand for every designated partner.**

Any LLP which fails to comply with the provisions of Section 34(1), (2) and (4), such LLP shall be punishable with fine which shall not be less than **rupees 25,000**, but may extend to **rupees 5 lakh** and every designated partner shall be punishable with fine which shall not be less than rupees 10,000, but may extend to rupees 1 lakh.

## ❖ CONVERSION INTO LLP

**Firm to LLP (Section 55):** in accordance with the provisions of this Chapter and the Second Schedule.

**private company to LLP (Section 56):** in accordance with the provisions of this Chapter and the Third Schedule.

**unlisted public company to LLP (Section 57):** in accordance with the provisions of this Chapter and the Fourth Schedule.

## ❖ 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 applicable provisions register the documents and issue a certificate of registration.
- (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 about the conversion.
- (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 the effects of the conversion shall be such as specified in the various schedules,.

### **Effect of Registration:**

- a) there shall be a LLP by the name specified in the certificate of registration registered under this Act;
- b) all tangible and intangible property, all assets, interests, rights, privileges, liabilities, obligations relating to the firm or the company 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 LLP 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.

## ❖ FOREIGN LLP

**Foreign limited liability partnerships (Section 59):** The Central Government may make rules for provisions in relation to establishment of place of business by foreign LLP within India and carrying on their business therein.

## ❖ 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:
  - a) if the LLP decides that LLP be wound up by the Tribunal;
  - b) if, for a period of more than six months, the number of partners of the LLP is reduced below two;
  - c) if the LLP is unable to pay its debts;
  - d) if the LLP has acted against the interests of the sovereignty and integrity of India, the security of the State or public order;



- e) 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
- f) if the Tribunal is of the opinion that it is just and equitable that the LLP be wound up.
- The Central Government may make rules for the provisions in relation to winding up and dissolution of LLP.

#### ❖ MISCELLANEOUS

**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.

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

#### **Establishment of Special Courts (Section 67A):**

1. The Central Government may, for 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:
3. Until Special Courts are designated or established, 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,
4. 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.

#### **Procedure and powers of Special Court. (Section 67B):**

1. all offences specified under section 67A(1) shall be triable only by the Special Court established or designated for the area in which the registered office of the LLP is situated 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. 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 3 years. However, in the case of any conviction in a summary trial, no sentence of imprisonment for a term exceeding 1 year shall be passed:
4. 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, 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.

**Electronic filing of documents (Section 68):** A copy of or an extract from any document electronically filed with or submitted to the Registrar or any information supplied by the Registrar as per the Information Technology Act, 2000 be admissible in evidence as of equal validity with the original document.

#### **Registration offices. (Section 68A):**

1. the Central Government shall, by notification, establish such number of registration offices at such places as it thinks fit, specifying their jurisdiction. It may appoint such Registrars, Additional Registrars, Joint Registrars, Deputy Registrars and Assistant Registrars as it considers necessary, for the registration of LLPs and discharge of various functions under this Act. The powers and duties of the Registrars and the terms and conditions of their service shall be such as may be prescribed. 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 LLPs.

**Payment of additional fee (Section 69):** Any document or return required to be registered or filed under this Act, if 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. However, such document or return shall be filed after the due date of filing, without prejudice to any other action or liability under this Act. Further, a different fee or additional fee may be prescribed for different classes of LLPs or for different documents or returns required to be filed under this Act or rules made thereunder.

### ❖ SMALL LIMITED LIABILITY PARTNERSHIP [SECTION 2(ta)]

It means a limited liability partnership—

1. the contribution of which, does not exceed 25 lakh rupees or such higher amount, not exceeding 5 crore rupees, as may be prescribed; and
2. the turnover of which, as per the Statement of Accounts and Solvency for the immediately preceding financial year, does not exceed 40 lakh rupees or such higher amount, not exceeding 50 crore rupees, as may be prescribed; or
3. which meets such other requirements as may be prescribed, and fulfils such terms and conditions as may be prescribed;

### ❖ DIFFERENCES WITH OTHER FORMS OF ORGANISATION

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

S.No.	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	legal entity separate from its members.	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.	Registration is voluntary.
6	Perpetual succession	The death, insanity, retirement or insolvency of the partner(s) does not affect its existence of LLP.	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.

### Distinction 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	Governed by contract agreement between the partners.	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. of members/partners	Minimum – 2 members Maximum – No such limit. 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.

### Past Year Questions

1. What are the essential elements to form a LLP in India as per the LLP Act, 2008?(May-2018-5 Marks)
2. Explain the essential elements to incorporate a Limited Liability Partnership and the steps involved therein under the LLP Act, 2008.(Nov-2018- 5 Marks)
3. "LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership". Explain.(June-2019-5 Marks)
4. Discuss the conditions under which LLP will be liable and not liable for the acts of the partner.(Nov-2019-5 Marks)
5. State the circumstances under which LLP may be wound up by the Tribunal under the Limited Liability Partnership Act, 2008. (Nov-2020-5 Marks)

6. State the circumstances under which a LLP and its partners may face unlimited liability under the Limited Liability Partnership Act, 2008. (Jan-2021-5 Marks)
7. Limited Liability Partnership (LLP) gives the benefits of - limited liability of a company on one hand and the flexibility of a partnership on the other. Discuss. (July-2021-5 Marks)
8. State the rules regarding registered office of a Limited Liability Partnership (LLP) and change therein as per provisions of the Limited Liability Partnership Act, 2008. (Dec-2021-5 Marks)
9. Explain the incorporation by registration of a Limited Liability Partnership and its essential elements under the LLP Act, 2008. (June-2022-5 Marks)