LLP Act, 2008

- 80 Sections
- 4 Sch
  - First — Mutual Rights & Duties of Partners (यदि LLP Agreement नहीं है)
  - Second — PF — Sec 55
  - Third — Pvt. Co — Sec 56
  - Fourth — unlisted Public Co — Sec 57
  - Second, Third, Fourth → LLP Conversion

Need – alt. corp. business vehicle.
- meet contemporary growth
- new alternative to partnership ~~unlimited liab~~ statute based governance ✓
- enable professional expertise & entrepreneurial initiative & flexible operation

Meaning & concept
- New form of legal business
- limited liab.
- LLP liable for full extent of assets
- alt. corp. business vehicle
- flexibility of organising internal structure

} hybrid b/w – company & – partnership

Definitions

Sec 2(1)(d) Body corporate:
- → Co u/s 2(20) of TCA, 2013
- → Co incorp. o/s India
- → LLP under LLP Act, 2008
- → LLP incorp o/s India

Don't include (–) Sole corp. (OPC), Co-op Society, BC notified by CG.

Sec 2(1)(e) Business: → trade → profession → service → occupation
Don't include (–) activity excluded by CG

Sec 2(1)(j) Designated Partner: Sec 7

Sec 2(1)(k) Entity: BC [for few sections – includes PF]

Sec 2(1)(l) Financial Year: 1st April to 31st March
★ LLP incorporated after 30th day of Sept. – next to next 31st March

Sec 2(1)(m) Foreign LLP: → incorp. o/s India → establishes place of business in India

Sec 2(1)(n) LLP: formed & registered under this act.

Sec 2(1)(o) LLP agreement: → written agreement b/w partners & LLP → determines rights & duties of partners (mutual / in relation to LLP) } if not made ↓ First Schedule

Sec 2(1)(q) Partner: Person who becomes partner in accordance with LLP agreement.

Sec 2(1)(ta) Small LLP: Contribution ≤ 5cr; T/o ≤ 50 cr; (+) meets required T&C

New additions:

Sec 2(1)(a) Address: Individual → Residential address; Body corporate → Registered office

Sec 2(1)(f) Chartered Accountant: CA + COP as per CA Act, 1949

Sec 2(1)(p) Name: Partner of LLP — Ind.: – forename – middle name – surname; BC: Registered name

Sec 2(1)(ra) Regional Director: appointed by CG

Sec 2(1)(s) Registrar: appointed by CG as – Registrar – additional " – joint " – deputy " – assistant " — for LLP Act / Co. Act

Sec 2(1)(v) Tribunal: NCLT u/s 408 of Co. Act.

Characteristics
1. BC ✓
2. Perpetual Succession ✓
3. Separate legal Entity ✓
4. Artificial legal Person ✓
5. limited liability ✓
6. mutual Agency ✗
7. LLP agreement ✗ → First Sch
8. Common Seal optional : affixed by 2 DP
9. Mgmt.: Partners; legal Compliances: DP
10. min Partners : 2, DP : 2; max : No limit
11. Business for profits only ~~Non economic~~
12. Investigation : CG have powers
13. Compromise/ Arrangement : Merger/ Amalg. as per act.
14. Conversion 55 56 57
15. E-filing : www.mca.gov.in using DSC
16. Foreign LLPs : CG may make rules

Advantages
- Easy to form
- Easy to dissolve
- Flexible capital structure
- limited liability
- Operates on basis of agreement
- flexibility w/o detailed legal requirements

Sections

Sec 4 Non Applicability of IPA, 1932 to LLP.

Sec 5 Partner — Ind; BC (Co ✓, LLP ✓]Foreign ✓)
Don't include (–): unsound mind; undischarged insolvent; applied to be adj. as insolvent. OPC ✗; Partnership Firm ✗; Co-op ✗

Sec 6 Min. no. of Partners — 2 — if any time reduced below this — one partner (+) business carried on > 6m. ↓ only partner having knowledge ↓ Personally liable

Sec 7 DP — min 2 (prior consent (+) DPIN) — atleast 1 shall be Indian Resident (≥ 120 days – PFY) — 30 Days → File with ROC
- if partners BC, BC → partners/nominees
- ID: → specifies DP → may state that each partner shall be DP from time to time
- LLP agreement: → Partner may become or cease to be DP

New additions:

Sec 8 Liabilities of DP
- responsible for → doing all acts ✓ → compliance of provisions ✓ → filing of docs ✓
- liable to all penalties for contravention

Sec 9 Changes in DP — vacancy — 30 days — appoint new DP (consent ✓, satisfy req. ✓); if not (1 DP only) ↓ each partner = deemed DP

Sec 10 Contravention
- < 2 DP or 1 DP ≠ Resident (Sec 7) or Sec 9 ↓ Penalty – 10K; continuing – 100/day; max : LLP – 1L, Partner – 50K
- Failure to file consent ↓ Penalty – 5K; Continuing – 100/day; max : LLP – 50K, DP – 25K

Incorporation

Sec 11 ID — (+) Statement by CA/CS/CMA etc. + partners [all requirements of Act + Rules complied] → File with ROC of State
Content: ≥ 2 subscribe names; → Name → Address of LLP & Partners & DP; → Business; → Other info
False statement: jail : 2 yrs; fine : 10K to 5L

Sec 12 Registration within 14 Days : → register ID → give Certificate [conclusive evidence of LLP incorp.] sign + Seal by ROC; → sufficient evidence of compliance

Sec 14 Effect of Registration — sue & be sued; optional common seal; acquire/dispose property; other acts BC can do.

Sec 13 Registered Office (+) Change — R.O. ad. — commⁿ + Notices to LLP/DP/partner by: – Post under certificate of posting – Registered Post
Change: File notice with ROC. Contravention : LLP + Partner – 500/day max 50K

नाम:

Sec 16 Reservation — apply to ROC + fees — Proposed LLP / Change name of Existing LLP → Reserve name for 3 months

Sec 15 — → "LLP" as last words → as per CG : ~~Undesirable~~ ~~Identical / too nearly resembles~~ — LLP, company, Registered Trademark ✗

Sec 17 Change if (overriding Sec 15, 16) — within 3 years → apply to CG → LLP change name within 3 months → 15 Days → Notice + order of CG → ROC change COI → 30 days → LLP change LLP agreement
Default ↓ CG shall allot new name ↓ ROC shall issue fresh COI ↓ LLP can later change name u/s 16

STEPS TO INCORPORATE LLP
- Step 1 : RESERVE NAME : e-form RUNLLP
- Step 2 : INCORPORATE : e-form FiLLiP — LLP/partner/DP details (+) consent ↓ within 30 Days
- Step 3 : LLP AGREEMENT : e-form 3

Partners & their Relations

Sec 22 Eligibility: ⇒ Persons subscribing ID = partners ⇒ Others may become as per LLP agreement

Sec 23 Relationship: ⇒ mutual Rights & Duties governed by LLP agreement ⇒ Agreement + changes + fees filed with ROC ⇒ Agreement before incorp. ↳ ratified by all partners after incorp. ⇒ Agreement absent → First Sch.

Sec 24 Cessation: ⇒ as per agreement – absent ⇒ Notice in writing ≥ 30 days ⇒ Death ⇒ unsound mind ⇒ insolvent — partner ⇒ Dissolution of LLP
Former partner still regarded as partner unless notice of cessation delivered to 3rd person / ROC
★ Cessation does not discharge existing obligations of former partner
Former Partner / Person entitled will receive: Capital Contri. / share in acc. profits as on date of cessation. Death / Insolvency : No interference in mgmt.

Sec 25 Registration of changes in Partners:
1. Partner change in name / add. → inform 15 Days → LLP
2. Partner ceases / becomes (consent) → LLP → Notice + fees, signed by DP → 30 Days (next 15 Days) → ROC; if not filed by LLP → ROC; obtain confirmation | No Reply – 15 Days | Register ✓

Contravention: Fine – 10K Partner. Contravention: Fine – 10K LLP + DP

Extent & limitation of liability of LLP / Partner

Sec 26 Partner — agent of LLP ✓ — not agent of partners

Sec 27 LLP (Extent of liability)
- not liable if : • Partner has no authority (+) • 3rd person knows this or does not know he is a partner
- liable if : act/omission [Even if wrongful] in course of business / within partner's authority
- ★ LLP की obligation सिर्फ LLP की होती है
- ★ LLP की liability LLP की property से चुकाते हैं

Sec 28 Partner — not liable personally — liable personally for own wrongful acts, not for wrongful acts of other partners

Sec 29 Holding out — words/conduct ↓ represents/ed as partner ↓ liable to person who gives credit (₹) to LLP on faith; also liable
★ Death के बाद estate/ LR liable नहीं होगा

Sec 30 Fraud : Unlimited Liability of Partner / LLP (unless w/o knowledge authority) — intent : to defraud creditors / Fraudulent Purpose — Punishment: jail : 5 yrs, fine : 50K to 5L. LLP/Partner/DP/'yee liable to pay comp. to any who has suffered loss

Sec 31 Whistle blowing — Court / NCLT — Reduce/waive penalty of partner / 'yee — not to be demoted, suspended, discriminated — if provided useful info during investigation that leads to conviction of LLP/partner/'yee

New additions :

Contributions

Sec 32 Form — tangible/intangible; movable/immovable; Other benefit – money ✓ – promissory note ✓ – contract for services ✓
₹ monetary value of contri of each partner ↓ accounted (+) disclosed in LLP a/c

Sec 33 Obligation to contribute → as per LLP agreement — LLP's creditor — extends credit ₹ / relies on obligation in agreement — NO notice of compromise b/w partners — enforce original obligation ✓

Financial Disclosures

Sec 34
1. BOA → proper → each FY → cash / accrual → double entry system → at registered office — contravention: LLP – 25K to 5L, DP – 10K to 1L
2. Statement of a/c & Solvency → Prepare within 6m from FY end each FY → signed by DP
3. File with ROC every year [Form + Fees] — Contravention : 100/day, max LLP – 1 lakh, DP – 50K
4. Audited as per rules | may be exempted by CG

Sec 34A CG + NFRA | prescribe — AS, SA recommended by ICAI

Sec 35 Annual Return + fees — LLP → 60 Days from FY end → ROC — Contravention : 100/day, max LLP – 1 lakh, DP – 50K

New additions:

Sec 36 docs (ID; partner names (+) changes; Stmt of a/c & solvency; Annual Return) — LLP files → ROC → Available for inspection (fees)

Sec 37 Return / stmt / doc → stmt — false — omits material fact — any person → imprisonment 2 yrs; fine 1L to 5L ₹

Sec 38 present partner, former partner, DP, 'yee → ans any Ques. / make any declaration / supply details in writing → within reasonable period → Registrar
if not / Registrar not satisfied with reply ↓ summon to appear before him/inspector ↓ fails : fine – 2K to 25K

Sec 39 Compounding of offence
- LLP/partner/DP person suspected of committing offence — sum : ₹ extend to max fine, not lower than min → RD [officer not below his rank] authorised by CG → may compound any offence [punishable with fine only]
- by order direct to file return / a/c / doc ↓ fails – max fine = 2x amt in Section
- LLP/DP/Partner — apply → Registrar — forward (+) comments → RD → compounds ✓ — intimate within 7 days
- COMPOUNDING: before prosecution ↓ no prosecution shall be instituted; after ↓ Registrar brings to notice of court [in writing] ↓ offender discharged.
- ★ not applicable to offence commited within 3 yrs from date when similar offence was compounded.

Assignment & t/f of partnership rights

Sec 42 partner → t/f share of P/L wholly / part — as per LLP agreement
this does not – disassociation of partner – winding up of LLP – entitle transferee to participate in mgmt / access info of LLP transactions.

Conversion into LLP

55 – 57 – already covered ↓ after satisfying compliance – Sec ✓ – Sch. ✓

Sec 58
- Registration: → ROC — COR → new LLP — 15 Days → Registrar of Firms / Co.
- Effect of Conversion: • LLP by name on COR ✓ • all assets / liab of firm/co t/f to LLP • Firm/ Co deemed to be dissolved & removed from registers

New additions :

Sec 59 Foreign LLP — CG makes rules — place of business / carrying on business — provisions of companies Act (+) modifications

Compromise, arrangement or reconstruction of LLPs

Sec 60 Compromise / arrangement b/w LLP & Creditors / partners
LLP, creditor, partner, liquidator [wind up] → apply → Tribunal → order a meeting → creditors / partners – called – held – conducted as Tribunal directs
★ Tribunal can put any suit / legal proceeding against LLP on hold until applⁿ is disposed.
majority (+) 3/4th in value agree (+) Sanctioned by Tribunal = binding on creditors/partners, LLP, liquidator, contributories [wind up]
not unless satisfied that applicant has disclosed all material facts inc – latest financial position – pendency of investigation proceedings
30 days → LLP file order → Registrar. Default : Penalty LLP + DP – 10K; continuing Default – 100/day max LLP – 1L, DP – 50K } common for Sec 60 & Sec 62

Sec 61 Sec 60 वाला order ✓ — Tribunal — power to supervise — directions / make modifications for proper working — satisfied it cannot be worked satisfactorily — own motion / applⁿ of interested persons — order for wind up of LLP u/s 64.

Sec 62 applⁿ u/s 60 made to Tribunal (+) it is shown to Tribunal — compromise / arrangement proposed for scheme – reconstruction – amalgamation (not with co.) & under scheme whole / part of undertaking / property / liabilities of t/f'or' LLP is t/f to t/f'ee' LLP
★ prop includes rights & powers; liab includes duties
not sanctioned unless Tribunal recvd report from Registrar, affairs of LLP not conducted in manner prejudicial to public int.
Tribunal by order u/s 60 / subsequent order make provisions for
- → t/f of undertaking / prop / liab. : order provides – prop shall vest in, freed from charge; liab shall become liab of — t/f'ee' LLP
- → continuation of legal proceedings pending by/against t/f'or' LLP
- → dissolution of t/f'or' LLP w/o wind up : not unless Liquidator has made report to Tribunal, affairs of LLP not conducted in manner prejudicial to public int.
- → provision for person dissenting from compromise/ arrangement
- → incidental, consequential & supplemental matters necessary for full effective reconstruction / amalgamation.

Winding Up & Dissolution

Sec 63 — Voluntary / Tribunal
Sec 64 Circumstances
- if LLP decides
- Partners < 2 for ↑ 6m
- ~~unable to pay debts~~ ✗
- ~~acted against sovereignity & integrity of India~~ ✗
- Default in filing statement of a/c / solvency or AR for 5 consecutive FY.
- Other just & Equitable ground.

Sec 65 CG may make rules

Miscellaneous

Sec 66 Partner — lend money / other business → LLP ↓ same rights and obligations as third persons

Sec 67 Companies Act Provisions — apply [with exception / modification] → LLP — if CG notifies in OG — Notification — draft laid in houses of Parliament [sessions > 30 days] — if Houses: disapprove the issue → Not to be issued ✗; makes modification → issued only in modified form

Sec 69 DOC — time ✗ → ROC ↓ may be filed later with additional fees

Omitted segment :

~~Sec 67A Speedy trials — CG establish Special Courts — consists of Single Judge [Sessions / Additional Sessions] if jail ≥ 3 yrs; Metropolitan magistrate / Judicial Magistrate of 1st class other offences~~

~~★ जब तक ये नहीं बनते : Co.Act वाले Special court trial करेंगे; if ये नहीं हैं तो – court of sessions / mm / Jm - 1st class try करेंगे~~

~~Sec 67B → in area of Registered office of LLP will try the offence; if > 1 SC in that area → HC will specify. — SC may try another offence also with which accused LLP may be charged at the trial — SC may try cases summarily if jail ≤ 3 yrs ↓ max sentence ≤ 1 yr ↓ if sentence > 1 yr required or summary trial undesirable → hear parties → record order → recall any witness → hear / re-hear the case as regular trial~~

~~Sec 67C HC → Special Court — may exercise all powers of CCP as if it were a "court of sessions" within local limits of jurisdiction of HC~~

~~Sec 68 LLP — filed → ROC; DOC supplied — e-mode + DSC ↓ true copy admissible as evidence as of equal validity of original doc~~

~~Sec 68A ROC Registration office → CG will establish at different places → CG may appoint Additional, Joint, Deputy, Assistant Registrars ↓ powers & duties prescribed → CG may direct ROC to prepare seal for authentication of docs.~~

New Section :

Sec 70 Enhanced Punishment — LLP/Partner/DP — 2nd / subsequent offence; Imprisonment — as provided; fine — 2x amt

Differences with other forms of org.

LLP vs. Partnership Firm
- Regulating Act
- Body corporate ✗
- Separate legal Entity ✗
- Name
- Registration
- Liability
- Creation (process vs. agreement)
- DP ✗
- Mutual Agency ✓
- Perpetual Succession ✗
- Common Seal ✗
- legal Compliances (कौन responsible? DP vs. all partners)
- Annual Filing of Documents ✗
- Foreign Partnership ✗
- minor as a partner. ✓

LLP vs. LLC
- Regulating Act
- Partners / members
- Internal governance structure (agreement vs. statute)
- Name
- No. of members/partners
- Liability
- Management (Partners vs. BOD)
- min. No. of Directors / DP