

# LIMITED LIABILITY PARTNERSHIP

## Introduction:

- \* The Parliament passed LLP bill on 12<sup>th</sup> Dec 2008, & President of India has assented the bill on 7<sup>th</sup> Jan 2009, & called as LLP Act, 2008 & many of its sections got enforced from 31<sup>st</sup> Mar 2009.
- \* This act have been enacted to make provision for the formation & regulation of LLP & for matters connected with (or) incidental thereto.
- \* The LLP Act, 2008 has 81 Sections & 4 Schedules
  - > First Schedule - deals with mutual rights & duties of partners as well as LLP & its partners in absence of formal agreement with respect of them
  - > Second Schedule - deals with conversion of a firm into LLP.
  - > Third Schedule - deals with conversion of a private co into LLP.
  - > Fourth Schedule - deals with conversion of unlisted public co into LLP.
- \* The Ministry of Corporate Affairs (MCA) & Register of Companies (ROC) are entrusted with the task of administering the LLP Act, 2008.
- \* The CG has the authority to frame the rules regard to LLP Act 2008
- \* It is also to be noted that "The Indian Partnership Act, 1932" is not applicable to LLP

## Meaning of LLP: V.V. Inf (Direct question)

- \* A LLP is a new form of legal biz entity with limited liability. It is an alternative corporate biz vehicle that not only gives the benefits of limited liability @ low compliance cost but allows its partners the flexibility of organising their internal structure as a traditional Partnership.
- \* A LLP is a separate legal entity & while the LLP itself will be liable for the full extent of its assets & liability of the partners will be limited.
- \* LLP is an alternative corporate biz form that gives the benefits of limited liability of a co & the flexibility of a partnership
- \* Since LLP contains elements of both 'corporate' as well as 'partnership firm' structure LLP is called a hybrid b/w co & partnership.

## Meaning of Small LLP: Sec 2(1)(ta): It means a LLP

- The contribution - doesn't exceed 250000 (or) such higher amt not exceeds 5000000 as may be prescribed
- The turnover - as per statement of accounts & solvency for the preceding FY doesn't exceed 4000000 (or) such higher amt not exceeds 50000000 as may be prescribed
- which meets such other requirements as may be prescribed & fulfils such terms & conditions

## CHARACTERISTIC OF LLP

- > Body corporate
- > Perpetual Succession
- > Separate legal entity
- > Mutual Agency
- > LLP agreement
- > Artificial legal person
- > Common seal
- > limited liability
- > Management of biz
- > Minimum & maximum no. of members
- > Biz of Profit only
- > Investigation
- > Compromise (a) arrangement
- > conversion into LLP
- > E-filing of documents
- > Foreign-LLPs

## Advantages of LLP

LLP form is a form of biz model which:

- > Is organised & operates on the basis of an agreement
- > provides flexibility without imposing details legal & procedural requirements
- > Easy to form
- > All partners enjoy limited liability
- > Flexible capital structure
- > Easy to dissolve

## Who can be a partner in LLP [Sec-5]

Any individuals (or) body corporate may be a partner in a LLP except

- Unsound mind
- Undischarged insolvent
- Applied to be adjudicated as an insolvent & his application is pending

Note: A minor also can't be a member/beneficiary in LLP.

The following persons can become partner in LLP

- Individuals (Resident Indian including NRI & Overseas Citizen of India & foreign citizen)
- LLP
- Companies (including foreign co)
- Foreign LLP
- LLP incorporated outside India
- Foreign companies
- Co-operative Society & Corporation Sole can't become partner

In case of introduction of capital/acquisition of existing stake in LLP by person resident outside India (other than NRI) the foreign direct investment compliance shall have to be undertaken by LLP which has investment is made

## Minimum Numbers of Partner [Sec-6]

- > Every LLP shall have at least 2 partner
- > If the number of partners reduced below 2 & carries on biz for more than 6M the person, who is the only partner shall be liable personally for the obligation incurred during that period

- ② **Designated Partners [Sec-7]**
- \* Every LLP shall have @ least 2 designated partners & @ least 1 of them shall be a resident in india
  - \* Provided if in LLP all the partners are bodies corporate (or) in which 100% or more partners are individuals & bodies corporate, @ least 2 individuals who are partners of such LLP (or) nominees of such bodies corporate shall act as designated partners.
  - \* Resident in india: a person who has stayed in india for a period of not less than 182 days during the immediately preceding 1 year
  - \* If the incorporation document:
    - Specifies who are to be designated partners, such persons shall be designated partners on incorporation
    - States that each of the partners from time to time of LLP is to be designated partner every partner shall be a designated partner
  - \* Any partner may become a designated partner by & in accordance with the LLP agreement & a partner may cease to be a designated partner in accordance with LLP agreement.
  - \* 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 in such form & manner as may be prescribed.
  - \* Every LLP shall file with the registrar the particulars of every individual who has given his consent to act as designated partner in such form & manner as may be prescribed within 30 days of his appointment
  - \* An individual eligible to be a designated partner shall satisfy such conditions & requirements as may be prescribed.
  - \* Every designated partner of the LLP shall obtain a designated partner identification Number [DPIN] from ceo & the provision of Sec 153 to 159 of the co act, 2013 shall apply mutatis mutandis for the said purpose.

### Liability of Designated Partners [Sec-8]

Unless expressly provided otherwise in this act, a designated partner shall be

- Responsible for the doing of all acts, matters & things as are required to be done by the LLP in respect of compliance of the provisions of this act including filing of any document, return, statement & the like report pursuant to the provision of this act & as may be specified in the LLP
- liable to all penalties imposed on LLP for any contravention of those provisions

### Changes in Designated Partners [Sec-9]

A LLP may appoint a designated partner within 30 days of vacancy arising for any reason & provisions of sub-section (4) & (5) of Sec-7 shall apply in respect of such new designated partner provided that if no DP is appointed (or) if @ any time there is only 1 DP, each partner shall be deemed to be a DP [Designated Partner]

- Punishment for contravention of Sec-7(a) [Sec-10]**
- (i) If the LLP contravenes the provisions of Sec-7(a) (i.e. The No. of designated partners are less than 2 (or) none of DP is a resident in India), the LLP & its every partner shall be liable to a penalty of 10000 ₹ in case of continuing contravention with further penalty of 100 per day in subject to maximum 10000 for LLP & 5000 for every partner of such LLP
- (ii) If the LLP contravenes the provisions of Sec-7(a) (failure to file the consent of appointment of DP within 30 days of his appointment) the LLP & its every designated partner shall be liable to penalty of 5000 ₹ in case of continuing 100 per day in subject to maximum 5000 for LLP & 2500 for partner.
- (iii) If the LLP contravenes the provision of Sec-7(s) the LLP & its every partner shall be liable to a penalty of 10000 ₹ in case of continuing contravention with further penalty of 100 per day subject to maximum 10000 for LLP & 5000 for every partner of such LLP.

### **Incorporation Document [Sec-11]**

(1) For a LLP to be incorporated

- > 2 (or) more person associated for carrying on a lawful bus with a view to profit shall subscribed their names to an incorporation documents.
- > The incorporation document shall be filed in such manner & with such fees, as may be prescribed with the registrar of the State in which the registered office of the LLP is to be situated &
- > Statement to be filed:
  - there shall be filed along with the incorporation documents, a statement in the prescribed form.
  - made by either an advocate (or) a CS (or) a CA (or) a CA who is engaged in the formation of the LLP
  - by anyone who subscribed his name to the incorporation document, that all the requirement of this act & the rules made thereunder have been complied with
  - in respect of incorporation & matters precedent & incidental thereto

(2) The incorporation document shall

- > Be in a form as may be prescribed
- > State the name of the LLP
- > State the proposed bus of the LLP.
- > State the address of the registered office of the LLP.
- > State the name & address of each of the person who are to be partner of the LLP on incorporation
- > State the name & address of the persons who are to be DP of the LLP on incorporation
- > Contain such other info concerning the proposed LLP as may be prescribed

(3) If a person makes a statement as discussed above which he knows to be false (or)

Doesn't believe to be true, shall be punishable with imprisonment - 2 years

with penalty / fine - not less than '10000' but extend to '50000'

### ③ Incorporation by Registration [Sec-12]

- (1) An receipt of incorporation documents & Statement U/s 11, Registrar shall retain such documents & within 14 days
- Register the incorporation documents, &
  - Give the LLP a certificate of incorporation
- ∴ Such certificate shall be signed by Roc & authenticated by official seal. it shall be conclusive evidence of incorporation of LLP with name specified therein
- (2) Statement delivered U/s -11 ⇒ Sufficient evidence of compliance with clause (a) of Sec -11

### Registered office of LLP & change therein [Sec-13]

- Every LLP shall have a register office to which all notices & communication may be addressed & received
- A document may be served at register office on an LLP (or) its Partner (or) DP by

Sending it by post

Registered post

Any other manner Prescribed.

- Change in Register office - file notice to register office in Prescribed manner.
- Penalty - 2500 per day upto 25000 for LLP & its DP.

### Effect of Registration [Sec-14]

An registration LLP shall be capable of -

- Being (or) being sued
- Doing & suffering all other acts, Body corporate may do & suffer
- Acquiring, owning, holding (or) disposal of Property
- Having a common seal.

### Name [Sec-15]

- > Every LLP shall add suffix - LLP (or) limited liability Partnership to its name Example: ABC LLP (or) ABC limited liability Partnership
- > No LLP shall be registered with a name, which in opinion of Cr. is: Undesirable  
Identical (or) closely resemble to name of existing LLP (or) CO (or) register trademark.

### Reservation of Name

- > A person may apply to Roc in prescribed manner + fees for reservation of
  - Name of Proposed LLP
  - Name to which LLP Proposed to change its name
- > Roc on Satisfaction that the name is not identical as per Cr. reserves the name for 3 Months from date of intimation (reserved for 20-60 days)

## Change in Name [Sec-17]

1. Not with standing anything contained in Sec-15 & 16, during first registration or upon registration with new name, if LLP is inadvertently registered with name identical or too similar to:
  - any other LLP or
  - A registered trademark under Trademark act 1999.

2. Cr, upon application by affected LLP, trademark proprietor or Co, may direct LLP to change its name within 3 Months from date of such direction

Note: Application by proprietor is to be made within 3y of incorporation

Change of Name  
On such change of Name - notify Roc within 15 days, Roc to make change in COI within 30 days

If LLP is in default in complying with any direction, Cr shall allot a new name to the LLP & the Roc shall enter the name (new) in register in place of old name & issue a fresh certificate of incorporation with new name provided that nothing shall prevent a LLP from subsequently changing its name.

Note: Unlike Sec-16 of Companies act, there Cr can't suo-moto order for rectification of name.

### Steps to incorporate LLP.

Reservation of Name: Applicant has to file e-form RUNLLP for the same

File e-form fill up for incorporating new LLP

Execution of LLP agreement & shall be filed within 30 days of incorporation

## PARTNERS & THEIR RELATIONS.

### Eligibility to be Partners [Sec-22]

An incorporation of a LLP, the persons who subscribed names to incorporate documents shall be its partners & any other person may become partner of LLP in accordance with the LLP agreement.

### Relationship of partners [Sec-23]

- > Same as otherwise provided, the mutual rights & duties of
  - Partners of a LLP &
  - LLP & its partnersshall be governed by the LLP agreement
- > LLP agreement & any changes made therein shall be filed with the Roc in prescribed manner + fees.
- > Any agreement in writing b/w LLP & subscribers before incorporation shall be valid only if ratified by all partners upon incorporation
- > In absence of agreement, the mutual rights & duties shall be determined by the first Schedule.

## (A) Cessation of Partnership Interest [Sec - 24]

- > A person may cease to be a partner:
  - in accordance with LP agreement with other partners (or)
  - in absence of agreement, by giving notice in writing > 30 days to other partners of his intention
- > A person shall cease to be a partner of LP in case of
  - Death of partner (or) dissolution of LP
  - Declared to be of unsound mind by competent court
  - applied to be adjudged as an insolvent (or) declared as an insolvent
- > where a person has ceased to be a partner of a LP, the former partner is to be regarded as still being a partner of the LP unless
  - The person has notice that former partner has ceased to be partner
  - Notice that former partner has ceased to be a partner is delivered to ROC
- > Cessation of partner doesn't discharge a partner of obligation incurred while being a partner
- > where a partner of LP ceases to be a partner, the former partner (or) a partner person entitled to his share. Case of the death (or) insolvency shall be entitled to receive from LP
  - Actual partner contribution made by such former partner
  - Right to share in accumulated profit after deduction of losses
- > Former partner shall not have any rights to interfere in mgt of LP

## Registration of changes in partners [Sec - 25]

- > Partner shall inform LP of any change in name (or) address within 15 days
- > A LP shall file a notice with ROC within 30 days in case where
  - a person becomes to be a partner, file a notice with the registrar
  - there is any change in the name & address of a partner
- > Such notice filed with ROC shall be
  - In prescribed manner + fees
  - Signed by DP
  - if relates to incoming partner, shall contain a statement that he consent to becoming a partner, signed & authenticated in prescribed manner
- > Penalty ₹20,000 for LP & DP → ₹5,000
- > If no confirmation is given by LP in 15 days, ROC shall register such notice

## Partner as agent [Sec - 26]

Partner are agent of the LP but not of other partners

## Extent of liability of LLP [Sec-27]

LLP is not bound by an act of a partner if  
Such partner has no authority of doing such act  
The person knows that he has no authority or does not know or believe him to be partner  
LLP is liable to any person for wrongful act by partner in course of his  
The obligation of LLP shall be solely obligation of LLP  
The liability of LLP shall be met out of property of LLP

## Extent of liability of Partner [Sec-28]

He is not personally liable, directly or indirectly for obligation solely by reason of being partner  
A partner shall be personally liable for his own wrongful act but not for other partner

## Holding Out [Sec-29]

## Unlimited liability in case of fraud [Sec-30]

Every person who was knowingly involved shall be punishable with :-  
Imprisonment upto 5y  
Fine 50000 to 500000.

## Whistle blowing [Sec-31]

No partner may be discharged, suspended, demoted, threatened, harassed merely because he provided info in court or tribunal

## CONTRIBUTIONS

### Form of contribution [Sec-32]

- > Partner contribution may consist of tangible or other benefits including money, promissory notes, & agreements to contribute cash etc.
- > The monetary value of partner contribution shall be accounted & disclosed in the accounts.

### Obligation to contribute [Sec-33]

The obligation to contribute shall be as per LLP agreement  
A creditor may enforce partner to contribute as per original obligation if he extends credit by relying on such original obligation as per the LLP agreement.

## FINANCIAL DISCLOSURES

### Maintenance of books of accounts, other records & Audit etc., [Sec-34]

- > Proper Books of accounts: shall be maintained on cash or accrual basis as per double entry system @ Ro for prescribed period of time
- > Statement of accounts & solvency: Every LLP shall prepare & file statement within 6m from end of FY signed by all DP's & filed with Roc in prescribed manner



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- Accounts of LLP shall be audited as may be prescribed. CLM may exempt certain LLP from audit
- Penalty for contravention
- Non-compliance of filing with ROC - LLP 100 per day to 100000  
- Partner 100 per day to 50000
  - Non-compliance of maintenance of BOA - LLP 25000 to 500000  
- Partner 10000 to 100000
  - maintenance of SVS  
Audit of BOA

## Accounting & auditing Standards [Sec-34(A)]

CLM in consultation with NFRA to prescribe accounting & auditing standards (as recommended by ICAI)

## Annual Return [Sec-35]

Every LLP shall file an annual return duly authenticated with ROC within 60 days of closure of FY  
Penalty 100 per day upto 10000 for LLP 50000 for every DP

## Inspection of document by registrar [Sec-36]

Incorporation document	Name of Partner & changes	SAS	Annual Return
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shall be available for inspection to any person as per prescribed rules

## Penalty for false statement

if in any return, statement (or) other document any person makes a statement:-  
which is false in any material particular, knowing it to be false or  
which omits any material fact knowing it to be material  
will be punishable with imprisonment upto 2y & fine 100000 to 500000

## Power of registrar to obtain information [Sec-38]

ROC may require any person of LLP to answer any question (or) supply any details in writing within a reasonable period

Failure to provide above info - ROC shall have power to summon that person to appear in person

contravention: fine 2000 to 25000

## Compounding of offences [Sec-39]

### Partners Transferable interest [Sec-42]

> Rights of a partner to a share of PL & received distributions as per LLP agreement are transferable either wholly (or) in part

> Transfer of any such rights does not by itself

- cause disassociation of partner (or) dissolution of LLP

- Entitle transferee to participate in mgt (or) access info of LLP transaction

- Conversion Into LLP → Second Schedule
- Sec-55 firm to LLP
- Sec-56 private co to LLP → Third Schedule
- Sec-57 Unlisted Public Co to LLP → Fourth Schedule.

Registration & effect of conversion [Sec-58]

Foreign LLPs [Sec-59]

Cr may prescribe rules in this behalf (similar to Co Act 2013)

Compromise (or) arrangement (C/A) of LLP [Sec-60]

Power of tribunal to enforce compromise [Sec-61]

Provision for facilitating reconstruction (or) amalgamation of LLP [Sec-62]

winding up & dissolution [Sec-63]

The winding up of LLP may be either voluntary (or) by tribunal & LLP, & wound up may be dissolved

Circumstances in which LLP may be wound up by tribunal [Sec-64]

LLP may be wound up by tribunal where:-

LLP decides that LLP be wound up by tribunal

For > 6M, No. of partners of LLP is reduced below two

LLP has acted against int of sovereignty & integrity of india, security of the State (or) public order

LLP has made default in filing with the ROC, the SAS & AR for any 5 consecutive Fy (or)

Tribunal is of the opinion that it is just & equitable that the LLP be wound up

Enhanced Punishment [Sec-70]

The LLP (or) any partner (or) OP shall for second offence be punishable with:-

- imprisonment as provided but
- with a fine which shall be twice the amt of fine for such offence.

## Difference b/w LLP & Partnership firm

Basis	LLP	Partnership firm
Regulating Act	LLP Act, 2008	Indian Partnership Act, 1932
Body corporate	Yes	Not a body corporate
Separate legal entity	Yes	No
Registration	Mandatory	Voluntary
Suffix	LLP	No guidelines
Liability	Limited to agreed contribution	Liability of partner - unlimited
Common Seal	It may have its common seal	No, such concept in partnership
Designated partners	$\geq 2$ DP & $\geq 1$ resident in India	No, such provision
Perpetual Succession	members may join or leave but its existence continues forever	It has no perpetual succession
Legal Compliance	Dps are responsible for all the compliance & penalties	All partners are responsible for all the compliance & penalties
Annual filing	file SAS & Annual return	No such requirement
Foreign Partnership	Foreign nationals can be partner	Can't be a partner
Minor as partner	Not allowed (even for benefit)	Yes, can be admitted to benefits

## Difference b/w LLP & limited company

Basis	LLP	Limited Company
Regulating Act	The LLP Act, 2008	The Companies Act, 2013
Contributors are called	Partners	Members
Internal governance	Governed by LLP agreement	Regulated by Statute i.e. Co. Act
Suffix	LLP	Private Ltd (or) Ltd
No. of partners/members	Min - 2 & Max - No limit	Priv Co: Min - 2, Max - 200 Public Co: Min - 7, Max - $\infty$
Liability	To extent of agreed contribution	Limited to unpaid amt of shares
Management	Managed by DPs	Managed by BoD
Min No. of directors (or) DP	minimum 2 DP	Priv Co - 2 directors Public Co - 3 directors