

## **Chapter 22**

# **The LLP Act, 2008**

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### 1. Introduction

- (1) LLP Act, 2008 received President's assent on 7th Jan 2009. It was notified by Ministry of Law & Justice on Jan 9, 2009. It came into force on 31st March, 2009, vide notification No. S.O. 891 (E), dated 31st March, 2009.
- (2) LLP Act, 2008 has 81 sections (Sec 81 is now omitted w.e.f 1<sup>st</sup> April 2022) and FOUR schedules.
- (3) **Amendment:** LLP Act, 2008 has been amended through LLP (Amendment) Act, 2021 dated 13<sup>th</sup> August, 2021.

<b>First Schedule</b>	<u>MUTUAL RIGHTS and DUTIES of Partners and LLP</u> in the absence of a formal agreement.
<b>Second Schedule</b>	Conversion of a <u>firm</u> into LLP.
<b>Third Schedule</b>	Conversion of a <u>private company</u> into LLP.
<b>Fourth Schedule</b>	Conversion of <u>unlisted public company</u> into LLP.

### 2. Limited Liability Partnership – Meaning and Concept

#### Meaning

LLP is a new form of legal business entity with limited liability. It is an alternative corporate business vehicle that not only gives the benefits of :-

- (1) limited liability at low compliance cost and
- (2) allows its partners the flexibility of organising their internal structure as a traditional partnership.

The LLP is a separate legal entity and, while the LLP itself will be liable to the full extent of its assets, the liability of the partners will be limited to the extent of their capital contribution.

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.

#### Definitions

- (1) **Address [ Sec 2 (1) (a) ]:** "Address" in relation to a partner of LLP, means:
  - (i) If Partner is an individual, his usual residential address; and
  - (ii) If Partner is a body corporate, the address of its registered office.



**(2) Body Corporate [ Sec 2 (1) (d) ]:**

Means and Includes	Does NOT Include
It <b>means a COMPANY</b> defined u/s 2(20) of Co. Act, 2013 and <b>includes</b> – (i) a LLP registered under this Act <b>[Indian LLP]</b> ; (ii) a LLP incorporated outside India <b>[Foreign LLP]</b> ; (iii) a company incorporated outside India <b>[CIOI]</b> ,	(i) A <b>Corporation Sole</b> . (ii) A registered <b>Co-operative Society</b> (iii) Any other body corporate <b>notified by CG</b> .

- (3) **Business [ Sec 2 (1) (e) ]:** includes every **Trade, Profession, Service and Occupation (POST)** except any activity which the CG may exclude by notification.
- (4) **Chartered Accountant [ Sec 2 (1) (f) ]:** means a CA as defined in Section 2(1)(b) of the **CA Act, 1949** and who has obtained a **certificate of practice** u/s 6(1) of the CA Act, 1949.
- (5) **Designated Partner [ Sec 2 (1) (j) ]:** means any partner **designated** as such pursuant to **Section 7**.
- (6) **Entity [ Sec 2 (1) (k) ]:** means any **BODY CORPORATE and includes**, for the purposes of Sections 18, 46, 47, 48, 49, 50, 52 and 53, a **FIRM** setup under the Indian Partnership Act, 1932.
- (7) **Financial Year [ Sec 2 (1) (l) ]:** means the period starting from **1<sup>st</sup> April** and ending on **31<sup>st</sup> March** of following year.

**Proviso:** For LLP incorporated after 30<sup>th</sup> September, the F.Y **MAY** end on 31<sup>st</sup> March of the next following year.

**Example:** If LLP is incorporated on 15<sup>th</sup> October, 2025, then its F.Y **MAY** be from 15<sup>th</sup> October, 2025 to 31<sup>st</sup> March, 2026 or 31<sup>st</sup> March, 2027.

- (8) **Foreign LLP [ Sec 2 (1) (m) ]:** means a LLP formed, incorporated or registered **outside India which establishes a place of business** within India.
- (9) **Limited Liability Partnership [ Sec 2 (1) (n) ]:** means a partnership formed and registered **under this Act**.
- (10) **LLP Agreement [ Sec 2 (1) (o) ]:** means any **written** agreement between :-  
☐ the partners of the LLP or  
☐ the LLP and its partners  
 which determines **MUTUAL rights and duties** of partners and their **rights and duties in relation to that LLP**.

**Section 23(4):** In absence of LLP Agreement, mutual rights & duties shall be determined by **First Schedule**.

- (11) **Name [ Sec 2 (1) (p) ]:** Name in relation to a partner of LLP, means –  
 (i) if an individual, his **forename, middle name** and **surname**; and  
 (ii) if a body corporate, its **registered name**;
- (12) **Partner [ Sec 2 (1) (q) ]:** Partner, in relation to LLP, means any person **who becomes a partner** in the LLP in accordance with the **LLP agreement**.
- (13) **Regional Director [ Sec 2 (1) (ra) ]:** means a person appointed as such by the CG for the purpose of **this Act** or the **Companies Act 2013**, as the case may be.
- (14) **Registrar [ Sec 2 (1) (s) ]:** means a person appointed by CG as Registrar, Additional /Joint /Deputy /Assistant Registrar, for the purpose of **this Act** the **Companies Act, 2013**, as the case may be.



**(15) Small LLP [ Sec 2 (1) (ta) ]:**

(A) Small LLP means an LLP that satisfies the following TWIN Conditions :-

Parameter	Existing Limit	Maximum Future Limit that may be prescribed
Capital Contribution	Upto ₹ 25 Lakhs	Upto ₹ 5 crores
<b>AND</b>		
Turnover for immediately P.F.Y.	Upto ₹ 40 Lakhs	Upto ₹ 50 crores

OR

(B) Small LLP means an LLP which meets such other prescribed requirements and terms & conditions.

**(16) Tribunal [ Sec 2 (1) (u) ]:** means the National Company Law Tribunal constituted u/s 408 of Companies Act 2013.

**Section 2(2): Applicability of the Companies Act, 2013 for certain definitions**

Words and expressions used and not defined in this Act but defined in the Companies Act, 2013 shall have the meanings respectively assigned to them in that Act.

**Characteristics of an LLP**

- (1) **LLP is a Body Corporate:** It is capable of entering into contracts and holding property in its own name.
- (2) **Perpetual Succession:** Death, insanity, retirement or insolvency of partners has no impact on the existence of LLP.
- (3) **Separate Legal Entity:** LLP is liable to the full extent of its assets but liability of the partners is limited to their agreed contribution in the LLP.
- (4) **Mutual Agency:** Every partner of a LLP is, for the purpose of the business of LLP, the agent of the LLP, but not of other partners (Section 26).
- (5) **LLP Agreement:** Mutual rights and duties of the partners within a LLP are governed by an agreement between the partners. (First Schedule in its absence)
- (6) **Artificial Legal Person:** A LLP is an artificial legal person because it is created by a legal process. LLP is invisible, intangible, immortal (it can be dissolved by law alone) but not fictitious because it really exists.
- (7) **Common Seal:** LLP may have a common seal, if it decides to have one [Section 14(c)]. Common Seal is NOT mandatory. 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.
- (8) **Limited Liability:** The liability of the partners will be limited to their agreed contribution in the LLP. Such contribution may be of tangible or intangible nature or both.
- (9) **Management of Business:** The partners in the LLP are entitled to manage the business of LLP. But only the Designated Partners are responsible for legal compliances.
- (10) **Minimum and Maximum number of Partners:** Every LLP shall have at least 2 partners and at least 2 Designated Partners (individuals), of whom at least 1 shall be resident in India. There is no maximum limit on the partners in LLP.
- (11) **Business for Profit Only:** LLP CANNOT be formed for charitable or non-economic purpose.
- (12) **Investigation:** CG shall have powers to investigate the affairs of LLP by appointment of competent authority.
- (13) **Compromise or Arrangement:** Any compromise or agreements including merger and amalgamation of LLPs shall be as per LLP Act, 2008 (Section 60 – 62).
- (14) **Conversion into LLP:** A firm, private company or an unlisted public company would be allowed to be converted into LLP (Section 55 – 58).



- (15) **E-Filing of Documents:** Every form, etc shall be filed in e-form on MCA website and authenticated by a partner /DP by digital signature.
- (16) **Foreign LLPs:** Foreign LLP CAN become a partner in an Indian LLP.

### **Advantages of LLP form**

LLP form is a form of business model which –

- (1) Is organised and operates on the basis of an agreement.
- (2) Provides flexibility without imposing detailed legal and procedural requirements.
- (3) Easy to form.
- (4) All partners enjoy limited liability.
- (5) Easy to dissolve.

### **Section 4: Non-Applicability of Indian Partnership Act, 1932**

Save as otherwise provided, Indian Partnership Act, 1932 shall not apply to LLP's.

### **Section 5: Partners**

Any INDIVIDUAL or BODY CORPORATE may be a partner in LLP.

#### **Disqualifications for becoming a Partner:**

An individual shall not be capable of becoming a partner of a LLP, if –

- (a) he has been found to be of unsound mind by a Court of competent jurisdiction and the finding is in force;
- (b) he is an undischarged insolvent; or
- (c) he has applied to be adjudicated as an insolvent and his application is pending.

#### **Following persons can become partner in LLP: -**

- (i) **Individuals:** Resident Indians, Non-Resident Indians (NRI), Overseas Citizen of India (OCI), Foreign Nationals
- (ii) **Body Corporates:** LLP, Companies, CIOI, Foreign Co., Foreign LLP, LLP incorporated outside India.

#### **Following persons CANNOT become partner in LLP: -**

- ☐ **NOT Body Corporates:** HUF, Co-operative Society and Corporation Sole.

**Foreign Direct Investment (FDI) compliances:** In case of introduction of capital /acquisition of existing stake in LLP by Persons resident outside India (PRO other than NRIs & OCIs investing on a non-repatriation basis), the FDI compliances shall be undertaken by the LLP in which such investment is made.

### **Section 6: Minimum Number of Partners**

- (1) Every LLP shall have at least 2 partners.
- (2) If the number of partners is reduced below 2 and still the LLP carries on business for more than 6 months, the sole partner shall be personally liable for all contracts entered into by the company AFTER the 6 months period.

**Section 7: Designated Partners (DP)**

(1) **Minimum No. of Designated Partners:** Every LLP shall have :-

- at least 2 DP who are INDIVIDUALS and
- at least 1 of them shall be a RESIDENT in INDIA.

**Resident in India:** A person who has stayed in India for not less than 120 days during the F.Y. (previous FY)

**Proviso:** If in LLP, "all the partners are bodies corporate (BC)" or "1 or more partners are individuals and BC", at least 2 INDIVIDUALS who are partners of such LLP or NOMINEES of such body corporate shall be DP.

**Example**

- LLP has 3 partners – Mr. X, XYZ Ltd and ABC Ltd. Mr. X **and** one nominee of any body corporate shall be DP.
- LLP has 3 partners – SI Ltd, MIS Ltd and YI Pvt Ltd. As there is no individual as partner in LLP, nominees of any 2 body corporates shall be DP.
- LLP has 5 partners – Mr. A (NR), Mr. B (NR) Ms. C (R), Ms. D (R) and Ms. E (R). In this case, one of the DP should be out of Ms. C, Ms. D and Ms. E.

**Sec 10(1): Penalty:** ₹ 10,000 and ₹ 100 per day upto maximum ₹ 1,00,000 (LLP) and ₹ 50,000 (every Partner).

(2) **Who shall be Designated Partners?**

(i) **Based on the Incorporation Document**

- Specified DP:** If the Incorporation Document specifies who are to be DP, then such persons shall be DP on incorporation; or
- Rotational DP:** If the Incorporation Document states that EACH of the partners from time to time of LLP is to be DP, EVERY partner shall be a DP.

(ii) **Based on the LLP Agreement:** Any partner may become or cease to be a DP as per LLP Agreement.

(3) **Consent:** An individual shall not become a DP unless he has given his prior consent in prescribed manner.

(4) **Filing Form 4:** LLP shall file the particulars of every DP with ROC, within 30 days of his appointment.

**Sec 10(2): Penalty:** ₹ 5,000 and ₹ 100 per day upto maximum ₹ 50,000 (LLP) and ₹ 25,000 (every DP).

(5) **Disqualifications for becoming DP:** An individual shall satisfy prescribed requirements.

**Siddharth Sir (Rule 9 for reference):** A person shall not be eligible for becoming DP, if he –

- has at any time within preceding 5 years been adjudged insolvent; or
- has at any time within preceding 5 years suspended payment to his creditors; or
- has been convicted by Court for offence involving moral turpitude and imprisoned for  $\geq 6$  months; or
- has been convicted by Court for offence u/s 30 (Unlimited Liability in Case of Fraud).

**Sec 10(3): Penalty:** ₹ 10,000 and ₹ 100 per day upto maximum ₹ 1,00,000 (LLP) and ₹ 50,000 (every Partner).

(6) **DPIN /DIN:** Every DP shall obtain a Designated Partner Identification Number (DPIN/DIN) from CG and Sections 153 to 159 of the Companies Act, 2013 shall apply mutatis mutandis for the said purpose.

**Section 8: Liabilities of Designated Partners (DP)**

Unless expressly provided otherwise in this Act, a DESIGNATED PARTNER shall be –



- (a) responsible for the doing of all acts required to be done by LLP for legal compliance including filing of document, return, statement and report under this Act or LLP agreement; and
- (b) liable to all penalties imposed on LLP for any contravention of those provisions.

### Section 9: Changes in Designated Partners (DP)

- ❑ LLP may appoint a DP within 30 days of vacancy arising for any reason.
- ❑ Section 7(4) and 7(5) shall apply in respect of such new DP (Filing Form 4 and Disqualifications).

**Proviso:** If no DP is appointed, or if at any time there is only 1 DP, EACH partner shall be deemed to be DP.

**Sec 10(3): Penalty:** ₹ 10,000 and ₹ 100 per day upto maximum ₹ 1,00,000 (LLP) and ₹ 50,000 (every Partner).

### Section 10: Punishment for Contravention of Sections 7 & 9

Punishment has been included at relevant provisions u/s 7 and 9 above.

## 3. Incorporation Of LLP



### Section 11: Incorporation Document (Form FiLLiP)

- (1) **Documents for Incorporation:** For LLP to be incorporated –
  - (a) **Subscribers:** 2 or more persons associated for lawful business to earn profit shall subscribe their names;
  - (b) **Filing FiLLiP:** The incorporation document (Form FiLLiP) shall be filed in prescribed manner alongwith fees with the local ROC (Amendment since 02.10.2018: Central Registration Centre); and
  - (c) **Declaration of Compliance:** Statement that all the requirements of this Act and rules w.r.t incorporation and incidental matters have been complied with, made by Advocate, CA, CS, CMA and Subscribers.
- (2) **Contents of Incorporation Documents:** The incorporation document shall –
  - (a) be in a form as may be prescribed (Form FiLLiP);
  - (b) state the name of the LLP;
  - (c) state the proposed business of the LLP;
  - (d) state the address of the registered office of the LLP;
  - (e) state the name and address of each of the PARTNERS and DESIGNATED PARTNERS;
  - (f) contain such other information as may be prescribed.

- (3) **Punishment for False Declaration:** If a person above makes a FALSE statement or does NOT believe it to be true, he shall be punishable as follows: -

<b>Imprisonment</b>	Maximum 2 years AND
<b>Fine</b>	₹ 10,000 ≤ Fine ≤ ₹ 5,00,000

### **Section 12: Incorporation by Registration**

- (1) **Incorporation Certificate:** When the requirements imposed by Section 11(1) have been complied with, Registrar (CRC) shall retain the incorporation document and, he shall within 14 days –
- register the incorporation document; and
  - give a certificate that the LLP is incorporated by the name specified therein.
- (2) The Registrar (CRC) may accept the statement delivered under Section 11(1)(c) as sufficient evidence that the requirement imposed by Section 11(1)(a) has been complied with.
- (3) The certificate issued u/s 12(1)(b) shall be signed by the Registrar (CRC) and authenticated by his official seal.
- (4) The certificate shall be conclusive evidence that the LLP is incorporated by the name specified therein.

### **Section 13: Registered Office (R/O) of LLP and Change therein**

- (1) **Registered Office:** Every LLP shall have a R/O to which all communications/notices may be addressed.
- (2) **Service of Documents on LLP:** A document may be served on LLP /Partner /DP by sending it :-
- by post under a certificate of posting or
  - by registered post or
  - by any other prescribed manner,
- at the Registered Office and any other specifically declared address (Form 12).
- (3) **Change:** LLP may shift its R/O and file notice (Form 15) with ROC. Change shall be effective only upon filing.
- (4) **Penalty:** ₹ 500 per day upto maximum ₹ 50,000 for LLP and every Partner.

### **Section 14: Effect of Registration (CAPS)**

On Registration, LLP shall by its name, be capable of –

- SUING and being sued;
- Acquiring, owning, holding, developing or disposing of PROPERTY (movable /immovable, tangible /intangible);
- Having a Common Seal, if it decides to have one; and
- Doing and suffering other ACTS and things as bodies corporate may lawfully do and suffer.

### **Section 15: Name**

- (1) **Suffix:** Every LLP shall have either "Limited Liability Partnership" or "LLP" as suffix in its name.
- (2) **Restriction in Name:** No LLP shall be registered by a name which in the opinion of the CG is –
- undesirable; or
  - identical or too nearly resembles the name of other LLP /company /registered trademark.



**Section 16: Reservation of Name**

- (1) **Application for Reservation of Name:** A person may apply to ROC in form (RUN-LLP) and prescribed manner and fees for reservation of name–
- (a) the name of a proposed LLP; or
  - (b) the name to which LLP proposes to change its name.
- (2) **Time Period of Reservation of Name:** If ROC is satisfied that the proposed name cannot be rejected u/s 15(2), then ROC may reserve the name for 3 months from the date of intimation.

**Section 17: Rectification of Name of LLP (3 months + 15 days + X + 30 days)**

- (1) **Time Limit to Rectify Name:** Notwithstanding anything contained in Sections 15 and 16,
- (a) if through inadvertence, or otherwise, the LLP, on its incorporation or change of name, is registered by a name which is identical with or too nearly resembles the name of other LLP /company /registered trademark,
  - (b) then on an application of such LLP /company /trademark proprietor, the CG may direct such LLP to change its name or new name within 3 months from the date of issue of such direction.

**Proviso:** Application by TM proprietor must be made within 3 years from incorporation or change of name.

- (2) **Notice of Change in Name to ROC:** After changing Name as per CG direction :-
- (a) LLP shall give notice of change (Form 5) to ROC along with CG's order, within 15 days of change.
  - (b) ROC shall carry out necessary changes in certificate of incorporation (COI) and within 30 days of such change in COI, LLP shall change its name in the LLP agreement.
- (3) **Default in complying Section 17(1):** If LLP defaults in complying with CG's direction, the CG shall allot a new name to the LLP and ROC shall enter the new name in register of LLP (MCA website) in place of the old name and issue a fresh certificate of incorporation with new name.

**Proviso:** Provided that nothing above shall prevent LLP from subsequently changing its name.

**4A. Partners and their Relations****Section 22: Eligibility to be Partners**

- ☐ Persons who subscribed their names to incorporation document (FiLLiP) shall be its partners and
- ☐ Persons may become partner of the LLP by and in accordance with the LLP agreement.

**Section 23: Relationship of Partners**

- (1) **LLP agreement:** Save as otherwise provided by this Act, MUTUAL RIGHTS and DUTIES of:

- ☐ Partners of a LLP, and
- ☐ LLP and its partners

shall be governed by the LLP agreement (or First Schedule in the absence of LLP Agreement)

**Section 23(4):** In absence of LLP Agreement, mutual rights & duties shall be determined by First Schedule.

- (2) **Changes in LLP agreement:** The LLP agreement and any changes, if any, shall be filed with the ROC in Form 3, in prescribed manner along with fees.
- (3) **Pre-Incorporation LLP Agreement:** An agreement in writing before incorporation of LLP between the SUBSCRIBERS may impose obligations on LLP, if it is RATIFIED by all the partners AFTER the incorporation.

**Section 24: Cessation of Partnership Interest**

- (1) **Mode of Cessation:** A person may cease to be a partner of LLP in accordance with :-  
(a) an Agreement with the other partners or,  
(b) by giving at least 30 days' Notice in writing (in the absence of agreement) to the other partners.
- (2) **Grounds of Cessation:** A person shall cease to be a partner of LLP –  
(a) on his Death or Dissolution of the LLP; or  
(b) if he is declared to be of Unsound Mind by a competent court; or  
(c) if he has applied to be adjudged as an Insolvent or declared as an insolvent.
- (3) **Continuing Liability of Former Partner in absence of Notice:** In relation to any person (Outsider) dealing with the LLP, the former partner is to be regarded as still being a partner of the LLP unless –  
(a) the PERSON (Outsider) has NOTICE that the former partner has ceased to be a partner of LLP; or  
(b) NOTICE (Form 4) that the former partner has ceased to be a partner has been delivered to ROC.
- (4) **No deemed discharge:** The cessation of a partner does not by itself discharge the partner from any obligation which he incurred while being a partner.
- (5) **Compensation:** Unless otherwise provided in LLP agreement, the former partner or person (legal heir/receiver) entitled to his share in case of his death or insolvency, shall be entitled to receive from the LLP –  
(a) an amount equal to the Capital Contribution of the former partner actually made to the LLP; and  
(b) right to share in Accumulated Profits (after deducting accumulated losses) as at the date of cessation.
- (6) **No interference in management:** A former partner or person (legal heir/receiver) shall not have any right to interfere in the management of the LLP.

**Section 25: Registration of Changes in Partners**

- (1) **Δ Name /ΔAddress:** Every partner shall inform the LLP of any change in his name or address within 15 days of such change in Form 6.

**Sec 25(5):** Penalty on Partner for not informing LLP = ₹ 10,000.

- (2) **Notice to ROC of ΔPartner/ΔName/ΔAddress:** A LLP shall file a NOTICE (Form 4) with the ROC within 30 days –  
(a) where a person BECOMES or CEASES to be a partner; and  
(b) where there is any CHANGE in the name or address of a partner.

**Sec 25(4):** Penalty on LLP and every DP for non-filing = ₹ 10,000.

- (3) **Manner of filing Notice:** A notice filed with the ROC u/s 25(2) –  
(a) shall be in prescribed form (Form 4) and fees;  
(b) shall be signed by Designated Partner and authenticated in prescribed manner; and  
(c) shall contain the CONSENT of the Incoming Partner, signed by him and authenticated in prescribed manner.
- (6) **In case LLP fails to file Notice with ROC, Partner may file it:** Former partner may himself file the notice (Form 4) with ROC, if he has reasonable cause to believe that LLP may not file it. ROC shall obtain a confirmation to this effect from the LLP.

**Proviso:** If no confirmation is given by LLP within 15 days, ROC shall register the notice.



**4B. Extent and Limitation of Liability of LLP & Partner****Section 26: Partner as Agent**

Every partner of a LLP, (for business purpose of LLP), is the AGENT of the LLP, but NOT of other partners.

**Section 27: Extent of Liability of LLP**

- (1) LLP is not bound by anything done by a partner in dealing with a person (Outsider) if –
  - (a) the partner has no authority to act for the LLP in doing a particular act; AND
  - (b) the person (Outsider) knows that he has no authority or does not believe him to be a partner.
- (2) LLP is liable if a partner of a LLP is liable to any person as a result of a wrongful act /omission in the course of the business of the LLP or with its authority.
- (3) An obligation of the LLP (contractual or otherwise), shall be solely the obligation of LLP.
- (4) The liabilities of the LLP shall be met out of the property of LLP.

**Section 28: Extent of Liability of Partner**

- (1) A partner is NOT PERSONALLY LIABLE, [directly or indirectly for an obligation u/s 27(3)] solely by reason of being a partner of the LLP.
- (2) However, a partner is PERSONALLY LIABLE for his OWN wrongful act /omission.

**Note:** By virtue of Sec 27(3) and 28(1), he is NOT personally liable for wrongful act /omission of other partner.

**Section 29: Holding out /Estoppel**

- (1) **Partner by Holding Out /Estoppel:** Any person (Partner by Holding Out /Estoppel) –
  - (a) who by words (spoken or written) or by conduct,
  - (b) represents himself, or knowingly permits himself to be represented as partner in LLP
  - (c) is liable to any person (creditor)
  - (d) who has on the faith of any such representation
  - (e) given credit to the LLP, whether the 'Partner by Holding Out /Estoppel' does or does not know that his representation has reached the creditor.

**Proviso:** However, the LLP shall also be liable to such creditor to the extent of credit received by it or any financial benefit derived thereon.

- (2) **No Liability of deceased Partner or legal heir:** If after a partner's death, LLP's business is continued in same LLP name, such continued use of LLP's name or deceased partner's name shall not by itself make his legal representative or estate liable for any act of the LLP done after his death.

**Section 30: Unlimited Liability in Case of Fraud (5 years + 50K to 5L + Damages)**

- (1) **Unlimited Liability for Fraud:** In case of fraud –
  - (a) if an act is carried out by LLP /Partners, to defraud creditors or for any fraudulent purpose,
  - (b) the liability of such LLP and partners shall be UNLIMITED for all debts or liabilities of LLP.

**Proviso:** If such act is done by Partner, LLP is liable to the same extent as the Partner unless it was without the knowledge or authority of the LLP.

- (2) **Punishment:** Every person who was knowingly a party to such fraud shall be punishable with :-

<b>Imprisonment</b>	Maximum 5 years AND
<b>Fine</b>	₹ 50,000 ≤ Fine ≤ ₹ 5,00,000

- (3) **Compensation to aggrieved person:** Where LLP /Partner /DP /Employee has conducted fraud as above, then without prejudice to any criminal proceedings which may arise under any law, they shall be liable to pay COMPENSATION to any person who has suffered LOSS or DAMAGE.

**Proviso:** The LLP shall not be liable, if any such Partner /DP /Employee has acted fraudulently without knowledge of the LLP.

### **Section 31: Whistle Blowing**

- (1) **Reduction or Waiver of Penalty:** The COURT or TRIBUNAL may reduce or waive any penalty against any PARTNER or EMPLOYEE of LLP, if it is satisfied that –
- he/she has provided useful information during investigation of such LLP; or
  - his/her information (whether or not during investigation) leads to conviction of LLP /Partner /Employee.
- (2) **Protection to the Whistle Blower:** No partner or employee may be Discharged, Demoted, Suspended, Threatened, Harassed or Discriminated merely because of his/her providing information.

## **4C. Contributions**

### **Section 32: Form of Contribution**

- (1) **Form of Contribution:** Partner's contribution may consist of:-
- tangible, movable or immovable or intangible PROPERTY or other benefit to the LLP, including money, promissory notes, other agreements to contribute cash or property, AND
  - contracts for SERVICES performed or to be performed.
- (2) **Disclosure:** The monetary value of partner's contribution shall be accounted & disclosed in LLP's accounts.

### **Section 33: Obligation to Contribute**

- (1) **LLP agreement:** The obligation to contribute Money /Property /Services shall be as per LLP agreement.
- (2) **Enforcement by Creditor:** A creditor, who extends credit by relying on partner's obligation in LLP agreement, without notice of any compromise between partners, may enforce the original obligation against such partner.



## 5. Financial Disclosures

### Section 34: Maintenance of Books of Account, Other Records and Audit, etc.

(1) **Proper Books of Account:** The LLP shall maintain proper books of account for each year on CASH basis or ACCRUAL basis as per double entry system at its registered office for prescribed period (8 years from the date on which they are made).

(2) **Preparation of Statement of Account and Solvency (SAS):** Every LLP shall prepare SAS in Form 8 within 6 months from each F.Y. end and it shall be signed by all Designated Partners (DP).

(3) **Filing of SAS:** Every LLP shall file SAS within 30 days from the end of 6 months of the F.Y. end with fees.

**34 (5): Penalty for non-filing:** ₹ 100 per day upto maximum ₹ 1,00,000 (LLP) and ₹ 50,000 (every DP).

(4) **Audit of Accounts:** The Accounts of LLP shall be audited as per prescribed rules.

**Proviso:** However, CG may exempt any class of LLP from audit.

(6) **Penalty for following non-compliances:-**

Sec 34(1)	Proper Books of Account	LLP:	₹ 25,000 ≤ Penalty ≤ ₹ 5 Lakhs
Sec 34(2)	Preparation of SAS	Every DP:	₹ 10,000 ≤ Penalty ≤ ₹ 1 Lakh
Sec 34(4)	Audit of Accounts		

### Section 34A: Accounting and Auditing Standards

CG may, in consultation with NFRA, as recommended by ICAI, prescribe Accounting & Auditing Standards for a class of LLP.

### Section 35: Annual Return

(1) Every LLP shall file duly authenticated Annual Return with ROC within 60 days of closure of its F.Y in Form 11.

**Example:** For F.Y. ending on 31st March, 2025, LLP shall file annual return latest by 30th May, 2025.

(2) **Penalty for non-filing:** ₹ 100 per day upto maximum ₹ 1,00,000 (LLP) and ₹ 50,000 (every DP).

### Section 36: Inspection of Document by Registrar

Incorporation document (FiLLiP),	Statement of Account and Solvency (Form 8)
Name of Partners and Changes, if any,	Annual Return (Form 11)

shall be available for public inspection in prescribed manner and on payment of fees.

### Section 37: Penalty for False Statement (2 years + 1L to 5L)

If in any return, statement or other document required under this Act, 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

he shall, save as otherwise expressly provided in this Act, be punishable with –

<b>Imprisonment</b>	Maximum 2 years AND
<b>Fine</b>	₹ 1,00,000 ≤ Fine ≤ ₹ 5,00,000

### Section 38: Power of Registrar to Obtain Information

- (1) **ROC's power to obtain information that is necessary for carrying out the provisions of this Act:** ROC may require any person including any PRESENT / FORMER Partner – DP – Employee of LLP to answer any question or make any declaration or supply any particulars in writing to him within a reasonable period.
- (2) **ROC's power to summon:** If the person fails to reply to ROC or ROC is not satisfied with his reply, then ROC shall have power to summon that person to appear before him or inspector or public officer (designated by ROC), to answer questions or make declaration or supply details.
- (3) **Penalty:** ₹ 2,000 ≤ Fine ≤ ₹ 25,000

### Section 39: Compounding of Offences

**Compounding Authority:** Regional Director (RD) or other officer not below the rank of RD authorised by CG.

- (1) **Compounding Amount:** Notwithstanding anything contained in the CrPC, 1973, RD /officer may compound any offence which is punishable with fine only by collecting a sum (amount):-  

MINIMUM amount provided for offence ≤ Compounding Amount ≤ MAXIMUM amount provided for offence
- (2) **Repeat Offence within 3 years:** Section 39(1) shall **NOT** apply to an offence committed by LLP /Partner /DP within 3 years from the date on which similar offence committed by it was compounded.  

**Explanation:** Second or subsequent offence AFTER the expiry of 3 years shall be deemed to be first offence.
- (3) **Application for compounding:** Application (Form 31) shall be made to ROC who shall forward it, together with his comments, to the RD /Officer.
- (4) **Intimation to ROC:** Where any offence is compounded, whether before or after institution of prosecution, Intimation shall be given to ROC within 7 days from date on which offence is compounded.
- (5) **Compounding BEFORE institution of Prosecution:** No prosecution shall be instituted in relation to such offence.
- (6) **Compounding AFTER institution of Prosecution:** ROC shall notify about compounding to the COURT where prosecution is pending and thereafter, the offender shall be discharged.
- (7) **Directions by RD /Officer:** While dealing with the compounding application, RD /Officer may direct any Partner /DP /Employee of the LLP to file such return, account or other document within specified time.

**Section 39(8):** If the Partner /DP /Employee fails to comply with RD's order u/s 39(7), the MAXIMUM Fine shall be TWICE the amount provided for such offence.

## 6. Assignment And Transfer Of Partnership Right

### Section 42: Partners Transferable Interest

- (1) **Transferable Rights of Partner:** The rights of a partner to a share of the profits and losses of the LLP and to receive distributions in accordance with the LLP Agreement are transferable either wholly or in part.



- (2) **No Disassociation /Dissolution:** The transfer of any right u/s 42(1) does NOT by itself cause the:-  
(a) Disassociation of the partner or  
(b) Dissolution and winding up of the LLP.
- (3) **Rights of Transferee or Assignee:** The transfer of right does NOT, by itself, entitle the transferee to:-  
(a) participate in the management or conduct of the activities of the LLP, or  
(b) access information concerning the transactions of the LLP.

## 7. Conversion Into LLP

### Section 55: Conversion from Firm into LLP

A firm may convert into LLP as per the provisions of this Chapter and the SECOND Schedule.

### Section 56: Conversion from Private Company into LLP

A private company may convert into LLP as per the provisions of this Chapter and the THIRD Schedule.

### Section 57: Conversion from Unlisted Public Company into LLP

An unlisted public company may convert into LLP as per the provisions of this Chapter and the FOURTH Schedule.

### Section 58: Registration and Effect of Conversion

- (1) **Certificate of Registration by ROC:**
- ☐ ROC on satisfying that firm, private co. or unlisted public co. has complied with Schedules, Act and Rules,
  - ☐ ROC shall issue certificate of registration.
  - ☐ The LLP is, on and from the date specified in the certificate, registered under this Act.

**Proviso: Intimate old ROF /ROC:** The LLP shall, within 15 days of the date of registration, inform concerned Registrar of Firms or ROC about the conversion & particulars of the LLP in prescribed form and manner.

- (2) Upon such conversion, the partners /shareholders /LLP /LLP partners shall be bound by respective SCHEDULE.
- (3) The effects of conversion shall be such as specified in the respective SCHEDULES, as the case may be.

#### Effect of Registration:

Notwithstanding anything contained in any other law, from the date of registration:

- (a) There shall be LLP by the name specified in certificate of registration registered under this Act;
- (b) All tangible (movable or immovable) & intangible property, assets, interests, rights, privileges, liabilities, obligations & whole undertaking of old firm /old company shall be transferred to and vest in the LLP; and
- (c) The old firm /old company, shall be deemed to be dissolved & removed from the records of old ROF /ROC.

### Section 59: Foreign LLPs

The CG may make rules for establishment of place of business in India by foreign LLP and carrying on their business in India by applying the provisions of Companies Act, 2013 mutatis mutandis.

## 8. Compromise, Arrangement or Reconstruction of LLP

Compromise (Sacrifice)	Arrangement (Very Broad Term)	Amalgamation (Merger & Demerger)
<b>Internal Reconstruction</b> <ul style="list-style-type: none"> <li>Members sacrifice some portion of their paid up capital.</li> <li>Creditors sacrifice some portion of their Outstanding Debt.</li> </ul>	<b>Capital Restructuring</b> Change in Capital Contribution of Partners and their voting rights.  <b>Debt (Loan) Restructuring</b> Extending Tenure, lowering interest Convert Debt into Capital.	<b>TOU- Transfer of Undertaking</b> <b>TOA- Transfer of Assets</b>  <b>Merger</b> $X + Y = Z$  <b>Demerger</b> $X = X + Y$

**Compromise:** It means a peaceful settlement of dispute through some sacrifice by members /creditors.

**Arrangement:** In 'arrangement' there is no dispute, but it modifies rights among the members /creditors.

**Examples of Arrangement and Compromise are:-**

- (1) Creditors agreeing to waive part of their dues,
- (2) Converting part or all dues of creditors into capital Contribution,
- (3) Extending time for payment,
- (4) Reduction in capital by partners, etc

### Section 60: Compromise or Arrangement (C-A) of LLP

- (1) **Application to the Tribunal:** Where a C-A scheme is proposed between :-
  - (a) LLP and its creditors; or
  - (b) LLP and its partners
 the TRIBUNAL (NCLT) may, [on the application of LLP /creditor /partner /liquidator] ORDER a MEETING of creditors /partners, to be called, held and conducted in prescribed manner.
- (2) **Dual Approval:** Approval of Creditors /Partners and Tribunal (NCLT)
  - ☐ **Approval from C /P:** MAJORITY representing 3 /4th in value of creditors /partners, and
  - ☐ **Approval from NCLT:** The C-A scheme is sanctioned by the Tribunal (NCLT order)
  - ☐ **Binding:** The C-A scheme shall be binding on all Creditors /Partners /LLP /Liquidator & Contributories.

**Proviso:** Tribunal shall not sanction the C-A Scheme unless it is satisfied that LLP /Applicant has disclosed:-

- ☐ All material facts including latest financial position; and
- ☐ All pending investigation proceedings.

- (3) **Filing NCLT's Order with ROC:**  
 Tribunal's order shall have effect only after it is filed by LLP with ROC within 30 days after making such order.
- (4) **Penalty for non-filing:** ₹ 10,000 and ₹ 100 per day upto maximum ₹ 1,00,000 (LLP) and ₹ 50,000 (every DP).
- (5) **Stay of Suit:** The Tribunal may, at any time after an application is made, stay the commencement or continuation of any suit /proceeding against LLP on such terms as it thinks fit, until the application is finally disposed of.



**Section 61: Power of Tribunal to Enforce Compromise or Arrangement**

- (1) **Power of Tribunal:** Where the Tribunal makes an order sanctioning a C-A u/s 60, it:
- ☐ shall have power to SUPERVISE the carrying out of C-A, and
  - ☐ may, at any time, give directions or make MODIFICATIONS in C-A scheme, for proper working of C-A.
- (2) **Winding up of LLP:** If the Tribunal is satisfied that a C-A sanctioned u/s 60 cannot work satisfactorily, it may, either on its own motion (suo-motu) or on the application of any person interested in the affairs of LLP, make an order for WINDING UP the LLP, and such an order shall be deemed to be an order u/s 64.

**Section 62: Provisions for Facilitating Reconstruction or Amalgamation of LLP**

**Siddharth Sir:** For Reconstruction /Amalgamation involving Transfer of Undertaking, comply with BOTH Section 60 (Dual Approvals) and Section 62 (Extra Procedures and Order Points).

- (1) **Amalgamation & Demerger:** Where an application u/s 60 is made to the Tribunal and it is shown that:
- (a) C-A scheme has been proposed for reconstruction or amalgamation of **any  $\geq 2$  LLP**; AND
  - (b) AND the whole or any part of undertaking, property or liabilities of any LLP (Transferor LLP) is to be transferred to another LLP (Transferee LLP), then :-  
the Tribunal may, either by C-A order or by a subsequent order, make provisions for the following matters:
    - (i) TRANSFER of the undertaking, property and liability of transferor LLP to the transferee LLP;
    - (ii) CONTINUATION of any legal proceedings pending by /against transferor LLP in the name of transferee LLP;
    - (iii) DISSOLUTION, without winding up, of transferor LLP;
    - (iv) provision for any person DISSENTING from C-A, within such time and manner as the Tribunal directs;
    - (v) such incidental, consequential and supplemental matters as are necessary.

**1<sup>st</sup> Proviso: ROC's Report before SANCTIONING the C-A scheme**

The Tribunal shall not sanction the C-A scheme unless it has received ROC's Report that the affairs of the LLP have not been conducted in a manner prejudicial to the interests of its partners or to public interest.

**2<sup>nd</sup> Proviso: Official Liquidator's Report before ordering DISSOLUTION of any transferor LLP**

The Tribunal shall not order the dissolution of any transferor LLP unless the Official Liquidator has, on scrutiny of the books and papers of the LLP, made a report to the Tribunal that the affairs of the LLP have not been conducted in a manner prejudicial to the interests of its partners or to public interest.

- (2) **Transfer of Property or Liabilities:** Where an order u/s 62 provides for transfer of property or liabilities, then, by virtue of order, the PROPERTY shall be freed from any charge, if the order so directs.
- (3) **Filing NCLT's Order with ROC:** LLP shall file a certified copy of NCLT's order with ROC within 30 days.
- (4) **Penalty for non-filing:** ₹ 10,000 and ₹ 100 per day upto maximum ₹ 1,00,000 (LLP) and ₹ 50,000 (every DP).

**Explanation:** In this section

- (i) "property" includes property, rights and powers of every description; and  
"liabilities" includes duties of every description.
- (ii) A LLP shall NOT be amalgamated with a COMPANY.

## 9. Winding Up & Dissolution

### Section 63: Winding up and Dissolution

The winding up of a LLP may be either Voluntary or by the Tribunal (NCLT).

### Section 64: Circumstances in which LLP may be wound up by Tribunal (NCLT)

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 more than 6 months, the number of partners of the LLP is reduced below 2;
- (c) ~~if the LLP unable to pay its debts~~; [Omitted by the Insolvency and Bankruptcy Code, 2016 (w.e.f. 15.11.2016)]
- (d) if LLP has acted against the sovereignty and integrity of India, the security of the State or public order;
- (e) if LLP has made default in filing the SAS (Form 8) or Annual Return (Form 11) for any 5 consecutive F.Y.; or
- (f) if the Tribunal is of the opinion that it is just and equitable that the LLP be wound up.

### Section 65: Rules for Winding up and Dissolution

The CG may make rules for the provisions in relation to winding up and dissolution of LLP.

## 10. Miscellaneous

### Section 66: Business Transactions of Partner with LLP

- ❑ A partner may lend money to and transact other business with the LLP and
- ❑ A partner has same rights and obligations w.r.t such loan /transactions as a person who is not a partner.

### Section 67: Application of the Provisions of the Companies Act

- (1) CG may, by NOG, direct that prescribed provisions of Co. Act, 1956 (2013) shall apply mutatis-mutandis to LLP.
- (2) A copy of every proposed notification (NOG) shall be laid down before Parliament.

### Section 69: Payment of Additional Fee

If any document /return is not registered /filed with ROC within prescribed time, it may be registered /filed AFTER that time, on payment of prescribed ADDITIONAL FEE.

1<sup>st</sup> Proviso – Document /return SHALL be filed AFTER the due date, without prejudice to other action or liability.

2<sup>nd</sup> Proviso - Different fee /additional fee may be prescribed for different classes of LLP /documents /returns.

### Section 70: Enhanced Punishment

The LLP /Partner /DP shall, for the SECOND or subsequent offence, be punishable with :-

- (a) imprisonment as provided, BUT in case of offences punishable with fine either along with or exclusive of imprisonment,
- (b) with fine which shall be TWICE the amount of fine for such offence.



## 11. Differences with Other Forms of Organisation

### Distinction Between LLP & Partnership Firm

Basis	LLP	Partnership Firm
<b>Regulating Act</b>	The LLP Act, 2008	The Indian Partnership Act, 1932.
<b>Body corporate</b>	It is a body corporate.	It is not a body corporate.
<b>Separate legal entity</b>	It is a Separate legal entity.	It is not a Separate legal entity.
<b>Creation</b>	Legal registration process LLP Act, 2008.	By Partners Agreement.
<b>Registration</b>	Registration is mandatory. LLP can sue and be sued in its own name.	Registration is voluntary. Only registered firm can sue the third parties.
<b>Perpetual succession</b>	YES.	NO.
<b>Name</b>	Limited liability Partnership (LLP) suffix.	No naming guidelines.
<b>Liability</b>	Limited to Partner's contribution (Capital)	Unlimited Liability of partner.
<b>Mutual agency</b>	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.
<b>Designated partners</b>	$\geq 2$ DP and $\geq 1$ DP is resident in India.	N / A
<b>Common seal</b>	It may have a common seal.	N / A
<b>Legal compliances</b>	Only DPs are responsible.	All partners are responsible.
<b>Annual filing</b>	File SAS and Annual Return.	N / A
<b>Foreign partnership</b>	Foreign nationals can become partner.	Foreign nationals cannot become partner.
<b>Minor as partner</b>	Minor cannot be admitted to the benefits.	Minor can be admitted to the benefits.

### Distinction Between LLP & Limited Liability Company (LLC)

Basis	LLP	Limited Company
<b>Regulating Act</b>	The LLP Act, 2008	The Companies Act, 2013.
<b>Investors /Owners</b>	Partners	Members
<b>Governance Structure</b>	Governed by LLP agreement	Regulated by Statute (Companies Act, 2013)
<b>Name</b>	Limited Liability partnership or LLP	Private Limited or Limited
<b>Number of P /M</b>	$2 \leq \text{No. of Partners} \leq \text{No limit}$	$1/2/7 \leq \text{No. of Members} \leq 1/200/\text{No Limit}$
<b>Max. Liability of P /M</b>	Agreed Contribution (Partner's Capital)	Amount Unpaid of Shares
<b>Management</b>	Designated Partners (DPs)	Board of Directors (BOD)
<b>Min. No. of DP /Director</b>	Minimum 2 Designated Partners	Minimum 1 / 2 / 3 Directors