LIMITED LIABILITY PARTNERSHIP ACT, 2008

NOTES OF LAW FOR CA FOUNDATION

It

Introduction :-

→ The Ministry of Law & Justice notified the LLP Act, 2008 on 7th January, 2009.

→ 2008 = Bill was passed by the Parliament on 12th Dec, 2008,

→ 2009 = The President of India has assented to the Bill on 7th Jan, 2009,

→ 2021 = Amended – The LLP (Amendment) Act, 2021 (~~[illegible]~~ Aug, 2021).

→ 81 sections & 4 schedules

Applicability → 31st March 2009

→ Schedules

- **First** – Mutual rights & liabilities of partners; absence of formal agreement
- **Second** – Conversion of a firm into LLP.
- **Third** – Conversion of a pvt. co. into LLP
- **Fourth** – Conversion of unlisted public co. into LLP.

→ gives the benefit of limited liability at low compliance.

→ allows flexibility of organizing their internal structure with agreement.

compliance → adherence to rules & regulations, laws & Statutes

PAGE NO.
DATE

→ LLP = MCA + ROC + CG → rules & amendments

→ IPA, 1932 → not applicable.

→ LLP is a "hybrid system" of co. & Partnership.
↳ Alternative corporate Business Vehicle.

Theory ques

Advantages of LLP Form ÷

1.) organized and operates on the basis of agreement.

2.) provides flexibility without imposing detailed legal procedural requirements.

3.) Easy to form

4.) Easy to dissolve

5.) Flexible capital structure

6.) All partners enjoy limited liability.

7.) low compliances.

Concept ÷

→ LLP is a separate legal entity.

Imp.

→ It has benefits of limited liability of a co. & the flexibility of partnership.

Benefits of Co.	Benefits of Partnership
☆.) Body corporate	☆.) Flexibility
☆.) Limited liability	☆.) Agreement
☆.) Perpetual succession	☆.) Easy to create
☆.) Separate Legal Entity	☆.) Easy to dissolve
☆.) Artificial Legal person.	☆.) Compliances are less.

Important definition :-

Imp.

1.) Body Corporate [Sec 2 (1)(d)] :-

means :-

① co. incorporated in India
② co. incorporated outside India
③ LLP incorporated in India
④ LLP incorporated outside India.

but does not include :-

① corporation sole (akela business kr rha hai)

② Co-operative society

③ CG = notification ✗ (in Official Gazette) preclude

Imp

2.) Foreign LLP [Sec - 2(1)(m)] :-

means a LLP formed, incorporated or registered outside India which establish place of business in India.

Imp

3.) Small LLP [Sec - 2(1)(ta)] :-

LLP satisfies :-

i.) contribution ≤ 25 lakhs (CG limit ≤ 5 cr.)

ii.) turnover ≤ 40 lakhs (CG limit ≤ 50 ~~lakhs~~ cr.)
(of the immediately preceding financial year)

or

iii.) Other ~~cron~~ requirements may be prescribed. rules

4.) Business [Sec - 2(1)(e)] :-

Every trade, profession, service & occupation except CG excluded by notification.

5.) Financial Year [Sec - 2(1)(l)] :-

following F.Y. | Next following

01/April — 30th Sept — 31st March

incorporated | incorporated

Regular | Special

e.g. if in 28/Aug 2019
end → 31st March 2020

e.g. 15/Oct 2019
end → 31/03/2021

means the period from 1st April of a year to the 31st March of the following year.

However, a LLP incorporated after 30th Sept. of a year then the financial year will end on 31st March of next year of following year.

e.g. → 15/10/2024 → 31/03/2026

But exact on 30 th Sep → so end on 31st March of following year.

~~Characteristics of LLP~~ :

Partners (Sec-5) :

Any individual or body corporate may be a partner in a LLP.

except :

- if he has been found to be of unsound mind by a Court
- he is an undischarged insolvent. liability not cleared
- adjudicated as an insolvent and application is pending inprocess

PAGE NO.
DATE __/__/____

Minimum no. of Partners (Sec - $\boxed{6}$):

→ min. - 2 partners, max. - no limit.

→ If at any time the no. of partners is reduced below two and the LLP ~~is~~ carries on business ~~after those~~ for more than six months after the period of six months if he still runs it alone than he is liable personally for the obligations of the LLP. during that period.

Designated Partners (Sec - $\boxed{7}$):

min. → 2 DP., max → no limit

have atleast two designated partners and one should be a resident ~~of~~ in India.
→ (not less than 120 days)

only individuals

Carry, handle, run ~~that~~ compliances.

If LLP is a combination of individuals and body corporate then the individual who is a resident of India and the body corporate shall provide nominees ~~to be~~ to act as designated partners.

If all are individuals → 2 - DP. + ROI
If all are B.C. → 2 - nominee + ROI
If combination → 2 - DP + Nominee + ROI

LLP

Individual | Body corporate

is Partnership firm ??

X

it can't form LLP as it is neither a individual nor a body corporate.

Characteristics of LLP :-

- LLP is a body corporate
- Perpetual succession
- Separate legal entity
- LLP Agreement (in absence of agreement follow LLP Act)
- Artificial Legal Person
- Common Seal (not mandatory) ↓ with DP
- Limited Liability
- Min. & max. no. of Partners
- Business for Profit only

- Foreign LLP
- Mgt. of Business
- Conversion into LLP.

explaination same as co. & partnership

↓

mixed

PAGE NO.
DATE

Sec - 26

→ Mutual Agency = No mutual agency, i.e liability is limited.

Imp

Partner ——— Partner

ⓧ Agent ⓧ Principal

But

Partner ——— LLP

Agent ✓

→ Every partner of LLP, for the purpose of the business is an agent of LLP.

Incorporation of LLP :

Incorporation Document (Sec - 11)

1.) a) Two or more persons associated for carrying on

- a lawful business
- with a view of profits
- Shall subscribe their names to an incorporation doc.

b.) doc. should be filed

- Such a manner with prescribed fees & prescribed form.
- with the Registrar of the ~~Com~~ State in
- in which the registered office of the LLP is to be situated.

c.) Statement to be filed

- St. in prescribed form.
- made by either an advocate, or a CS or a CA or a cost accountant, who is engaged in the Inc. of the LLP.
- by any one partner's signature / subscribed his name to the Inc. doc.

2) Inc. doct.

- In prescribed form
- State – name of LLP.
- State – proposed business
- State – address – registered office – LLP.
- State – name & address – each partner.
- State – name & address – designated partner.
- contain such other info. concerning the LLP.

3) If a person makes a statement

- Knows to be false
- doesn't believe to be true, punishable
  → imprisonment (2 years) – may extend
  → fine not less than ₹ 10,000 → may extend to ₹ 5 lakhs.

4.) LLP agreement should be formed b/w partners and if absent then Schedule 1 of LLP Act, 2008

Incorporation By Registeration (Sec - 12) :-

→ when the requirements under sec - 11(1)(a)(b)(c) have been complied / scrutinized with ROC he shall within 14 days :-

- register the Inc. doc. and
- give a certificate

→ St. delivered under sec - 11(c) as sufficient evidence

→ Certificate shall be signed by Registrar and authenticated by his official seal.

→ Certificate → conclusive evidence.

Registered Office of LLP and change therein (Sec - 13) :-

→ Every LLP shall have a registered office where all the communications & notices may be addressed & received.

→ doc. to be served on a LLP or a partner or a DP by sending it by post or a certificate of posting or by a registered post, as may be prescribed, at the registered office

PAGE NO. 11
DATE __/__/____

or any other address declared by the LLP.

→ LLP may change its registered office & file a notice to ROC in prescribed form

→ Penalty if any wrong → ₹500/- per day to ₹50,000.

Effect of Registration (Sec-14):

→ On registration a LLP, is capable of :-

1) of suing & being sued.

2) can acquire, hold, own & dispose property or immovable (tangible or intangible) prop.

3) can have a common seal

4) Body corporate → all work like this

Name (Sec-15) :

→ at the last words of the LLP's name there should be written - "limited liability Partnership" or "LLP".

→ No LLP can register a name which is

PAGE NO. 11
DATE __/__/____

- undesirable (in the opinion of CG) or
- identical or too nearly to that of any other LLP or a co. or a registered trade mark under Trade Marks Act, 1999. (RTM)

Reservation of Name (Sec-16):

→ application to ROC with prescribed form & fees with:

a.) name of a purposed LLP (or)
b.) name to which LLP proposes to change its name.

→ after the payment of prescribed fees, the Registrar, if satisfied, to the rules prescribed by CG (Sec-15), then reserves the name for a period of 3 months from the date of intimation.

Change of Name of LLP (Sec-17)

Inadvertence → mistake on the side of CG.

If CG approves the registered name of LLP by inadvertence that it resembles the same name of:
- other LLP or a co.
- registered trade mark

→ LLP got its name registered
→ But it resembles or is identical to any existing (LLP) or (RTM).
→ CG will direct LLP to change its name within - 3 months
→ If not then CG changes the name - "Suo Motu" and LLP will have to use that name.
→ If LLP listens & sends notice to ROC in 15 days then in the next 30 days as per new COI - LLP can change its name in the LLP agreement & new/fresh COI is issued.

Note: the proprietor of registered TM should notify CG within 3 years of date of incorporation.