

# **THE LIMITED LIABILITY PARTNERSHIP ACT, 2008**

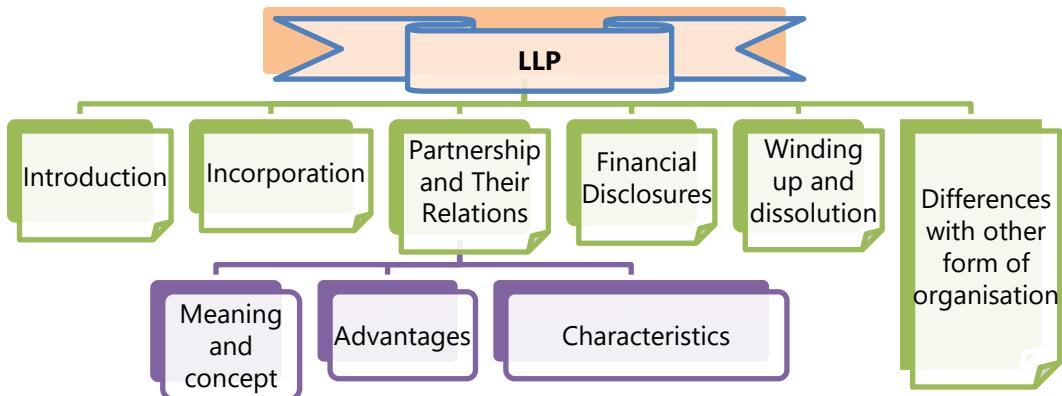


## **LEARNING OUTCOMES**

**At the end of this chapter, you will be able to:**

- ◆ Comprehend the meaning of the term 'Limited Liability Partnership', its need, scope and advantages
- ◆ Know about the Incorporation of LLP, Partners and their relations, financial disclosures, conversions, winding up and dissolution.
- ◆ Differentiate between 'Limited Liability Partnership' and other forms of organization.

## CHAPTER OVERVIEW



### 1. INTRODUCTION

The Ministry of Law and Justice on 9<sup>th</sup> January 2007 notified the Limited Liability Partnership Act, 2008.

The Parliament passed the Limited Liability Partnership Bill on 12<sup>th</sup> December, 2008 and the President of India has assented the Bill on 7<sup>th</sup> January, 2009 and called as the Limited Liability Partnership Act, 2008 (the "LLP Act, 2008").

**The LLP Act, 2008 is applicable to the whole of India**

This Act has been enacted to make provisions for the formation and regulation of Limited Liability Partnerships and for matters connected therewith or incidental thereto.

The LLP Act, 2008 has 81 sections (of which section 81 is now omitted with effect from 1<sup>st</sup> April 2022) and 4 schedules.

**The First Schedule deals** with mutual rights and duties of partners and limited liability partnership and its partners where there is absence of a formal agreement amongst them.

**The Second Schedule** deals with conversion of a firm into LLP.

**The Third Schedule** deals with conversion of a private company into LLP.

**The Fourth Schedule** deals with conversion of unlisted public company into LLP.

The Ministry of Corporate Affairs and the Registrar of Companies (ROC) are entrusted with the task of administrating the LLP Act, 2008. The Central Government has the authority to frame the Rules with regard to the LLP Act, 2008, and can amend them by notifications in the Official Gazette, from time to time.

It is also to be noted that the Indian Partnership Act, 1932 is not applicable to LLPs.

**Note**

The Limited Liability Partnership Act, 2008 has been recently amended through the Limited Liability Partnership (Amendment) Act, 2021 dated 13<sup>th</sup> August, 2021.

**Need of new form of Limited Liability Partnership**

The lawmakers envisaged the need for bringing out a new legislation for creation of the Limited Liability Partnership to meet with the contemporary growth of the Indian economy. A need has been felt for a new corporate form that would provide an alternative to the traditional partnership with unlimited personal liability on the one hand and the statute-based governance structure of the limited liability company on the other hand. In order to enable professional expertise and entrepreneurial initiative and to combine and operate in flexible, innovative and efficient manner, the LLP Act, 2008 was enacted.



Thus, LLP as a form of business organization is an alternative corporate business vehicle. It provides the benefits of limited liability but allows its members the flexibility of organizing their internal structure as a partnership based on a mutually arrived agreement. The LLP form enables entrepreneurs, professionals and enterprises providing services of any kind or engaged in scientific and technical disciplines, to form commercially efficient vehicles suited to their requirements. Owing to flexibility in its structure and operation, the LLP is a suitable vehicle for small enterprises and for investment by venture capital.



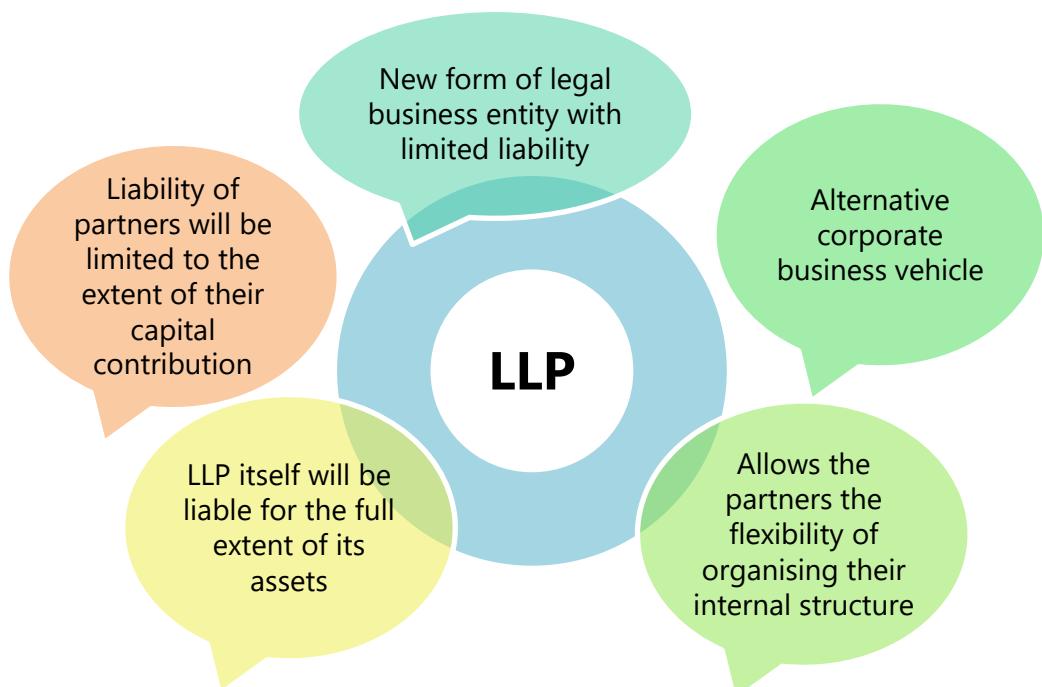
## 2. LIMITED LIABILITY PARTNERSHIP- MEANING AND CONCEPT

**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 limited liability at low compliance cost but 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.



LLP as a separate legal entity and business organisation is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership.

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 [(Section 2(1)(a)]:** "Address" in relation to a partner of a limited liability partnership, means—
  - (i) if an individual, his usual residential address; and
  - (ii) if a body corporate, the address of its registered office.
  
2. **Body Corporate [(Section 2(1)(d)]:** It means a company as defined in clause (20) of section 2 of the Companies Act, 2013 and includes—
  - (i) a LLP registered under this Act;
  - (ii) a LLP incorporated outside India; and
  - (iii) a company incorporated outside India,  
but does not include—
    - (i) a corporation sole;
    - (ii) a co-operative society registered under any law for the time being in force; and
    - (iii) any other body corporate (not being a company as defined in clause (20) of section 2 of the Companies Act, 2013 or a limited liability partnership as defined in this Act), which the Central Government may, by notification in the Official Gazette, specify in this behalf.



### Means

A company & **includes** - LLP, foreign LLP, foreign company,

**Does not include –**  
corporation sole; co-operative society & any other body corporate notified by Central Government.

3. **Business [Section 2(1)(e)]:** "Business" includes every trade, profession, service and occupation except any activity which the Central Government may, by notification, exclude.

4. **Chartered Accountant [Section 2(1)(f)]:** means a Chartered Accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act.
5. **Designated Partner [Section 2(1)(j)]:** "Designated partner" means any partner designated as such pursuant to section 7.
6. **Entity [Section 2(1)(k)]:** "Entity" 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 [Section 2(1)(l)]:** "Financial year", in relation to a LLP, means the period from the 1st day of April of a year to the 31st day of March of the following year.

However, in the case of a LLP incorporated after the 30th day of September of a year, the financial year may end on the 31st day of March of the year next following that year.

**Example 1:** If a LLP has been incorporated on 15th October, 2022, then its financial year may be from 15th October, 2022 to 31st March, 2024. However, the LLP can always maintain its first accounts from 15<sup>th</sup> October, 2022 to 31<sup>st</sup> March, 2023 i.e. for a period of less than 12 months. The period for which the first accounts of LLP are prepared shall not exceed 18 months.

The Income Tax department has prescribed uniform financial year from 1st April to 31st March of next year. In keeping with the Income tax law, the financial year for LLP should always be from 1st April to 31st March each year.

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



The First Schedule shall be applicable for all matters not covered by the Agreement w.r.t. the mutual rights and duties of the partners and their rights and duties in relation to the LLP.

11. **Name [Section 2(1)(p)]:** in relation to a partner of a limited liability partnership, means—
  - (i) if an individual, his forename, middle name and surname; and
  - (ii) if a body corporate, its registered name;
12. **Partner [Section 2(1)(q)]:** Partner, in relation to a LLP, means any person who becomes a partner in the LLP in accordance with the LLP agreement.
13. **Regional Director [Section 2(1)(ra)]:** means a person appointed as such by the Central Government for the purpose of this Act or the Companies Act 2013, as the case may be.
14. **Registrar [Section 2(1)(s)]:** means a person appointed by Central Government as Registrar, an Additional Registrar, a Joint Registrar, a Deputy Registrar or an Assistant Registrar, for the purpose of this Act or the Companies Act, 2013, as the case may be.
15. **Small limited liability partnership [Section 2(1)(ta)]:** It means a limited liability partnership—
  - (i) the contribution of which, does not exceed twenty-five lakh rupees or such higher amount, not exceeding five crore rupees, as may be prescribed; and
  - (ii) the turnover of which, as per the Statement of Accounts and Solvency for the immediately preceding financial year, does not exceed forty lakh rupees or such higher amount, not exceeding fifty crore rupees, as may be prescribed; or
  - (iii) which meets such other requirements as may be prescribed, and fulfils such terms and conditions as may be prescribed;

<b>Contribution</b>	<b>Up to ₹ 25L, &amp;</b>
Turnover for immediately preceding F.Y.	Up to ₹ 40 L, or
Fulfils	prescribed terms and conditions

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

**Note:**

**Applicability of the Companies Act, 2013:** 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. **[Section 2(2)]**

**Non-applicability of the Indian Partnership Act, 1932:** Save as otherwise provided, the provisions of the Indian Partnership Act, 1932 shall not apply to a LLP. **[Section 4]**

### CHARACTERISTIC OF LLP

- Body Corporate
- Perpetual Succession
- Separate legal entity
- Mutual Agency
- LLP Agreement
- Artificial Legal person
- Common Seal
- Limited liability
- Management of business
- Minimum & maximum number of members
- Business for profit only
- Investigation
- Compromise or Arrangement
- Conversion into LLP
- E-filing of documents
- Foreign LLPs

1. **LLP is a body corporate:** Section 2(1)(d) of the LLP Act, 2008 provides that a LLP is a body corporate formed and incorporated under this Act. Section 3 of the LLP Act provides that LLP is a legal entity separate from that of its partners and shall have perpetual succession. Therefore, any change in the partners of a LLP shall not affect the existence, rights or liabilities of the LLP.
2. **Perpetual Succession:** The LLP can continue its existence irrespective of changes in partners. Death, insanity, retirement or insolvency of partners has no impact on the existence of LLP. It is capable of entering into contracts and holding property in its own name.
3. **Separate Legal Entity:** Section 3 of LLP Act provides that a LLP is a body corporate formed and incorporated under this Act and is a legal entity separate from that of its partners. The LLP is liable to the full extent of its assets but liability of the partners is limited to their agreed contribution in the LLP. In other words, creditors of LLP shall be the creditors of LLP alone.
4. **Mutual Agency:** No partner is liable on account of the independent or unauthorized actions of other partners, thus individual partners are shielded from joint liability created by another partner's wrongful business decisions or misconduct. In other words, all partners will be the agents of the LLP alone. No one partner can bind the other partner by his acts.
5. **LLP Agreement:** Mutual rights and duties of the partners within a LLP are governed by an agreement between the partners. The LLP Act, 2008 provides flexibility to partner to devise the agreement as per their choice. In the absence of any such agreement, the mutual rights and duties shall be governed by Schedule I of the LLP Act, 2008.
6. **Artificial Legal Person:** A LLP is an artificial legal person because it is created by a legal process and is clothed with all rights of an individual. It can do everything which any natural person can do, except of course that, it cannot be sent to jail, cannot take an oath, cannot marry or get divorce nor can it practice a learned profession like CA or Medicine. A LLP is invisible, intangible, immortal (it can be dissolved by law alone) but not fictitious because it really exists.
7. **Common Seal:** A LLP being an artificial person can act through its partners and designated partners. LLP may have a common seal, if it decides to have one [Section 14(c)]. Thus, it is not mandatory for a LLP to have a common

seal. It shall remain under the custody of some responsible official and it shall be affixed in the presence of at least 2 designated partners of the LLP.

8. **Limited Liability:** 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). 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.

**Example 2:** The professionals like Engineering consultants, Legal Advisors and Accounting Professional are afraid of entering into business due to unlimited liability. Hence, the LLP Act provides an avenue for these professionals to enter into Limited Liability Partnership firms which restrict their liability to the agreed amount. This has encouraged Professionals to form LLP.

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 two partners and shall also have at least 2 individuals as designated partners, of whom at least one shall be resident in India. There is no maximum limit on the partners in LLP.
11. **Business for Profit Only:** The essential requirement for forming LLP is carrying on a lawful business with a view to earn profit. Thus, LLP cannot be formed for charitable or non-economic purpose.
12. **Investigation:** The Central Government shall have powers to investigate the affairs of an LLP by appointment of competent authority for the purpose.
13. **Compromise or Arrangement:** Any compromise or agreements including merger and amalgamation of LLPs shall be in accordance with the provisions of the LLP Act, 2008.
14. **Conversion into LLP:** A firm, private company or an unlisted public company would be allowed to be converted into LLP in accordance with the provisions of LLP Act, 2008.
15. **E-Filing of Documents:** Every form or application of document required to be filed or delivered under the act and rules made thereunder, shall be filed



in computer readable electronic form on its website www.mca.gov.in and authenticated by a partner or designated partner of LLP by the use of electronic or digital signature.

16. **Foreign LLPs:** Section 2(1)(m) defines foreign limited liability partnership "as a limited liability partnership formed, incorporated, or registered outside India which established a place of business within India". 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.

### **Partners [Section 5]**

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



The following persons can become partner in LLP:

- (i) Individuals (Resident Indians including Non Resident Indians & Overseas Citizen of India as well as foreign nationals)\*
- (ii) Limited Liability Partnerships
- (iii) Companies (including foreign companies)\*

- (iv) Foreign Limited Liability Partnerships\*
- (v) Limited Liability Partnerships incorporated outside India
- (vi) Foreign Companies.

Co-operative society and corporation sole cannot become partner in a LLP.

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

### **Minimum number of Partners [Section 6]**

- (i) Every LLP shall have at least two partners.
- (ii) If at any time the number of partners of a LLP is reduced below two and the LLP carries on business for more than six months while the number is so reduced, the person, who is the only partner of the LLP during the time that it so carries on business after those six months and has the knowledge of the fact that it is carrying on business with him alone, shall be liable personally for the obligations of the LLP incurred during that period.



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### **Designated Partners [Section 7]**

- (1) Every LLP shall have at least two designated partners who are individuals and at least one of them shall be a resident in India.

Provided, if in LLP, all the partners are bodies corporate or in which one or more partners are individuals and bodies corporate, at least two individuals who are partners of such LLP or nominees of such bodies corporate shall act as designated partners.

**Example 3:** A LLP has three partners, one individual i.e. Mr. X and two bodies corporates viz. M/s XYZ Ltd and M/s ABC Ltd. In this case Mr. X and one nominee of any body's corporate shall be designated partners.

**Example 4:** A LLP by the name SMY LLP has three partners namely 1. SI Limited, 2. MIS Limited, 3. YI Private Limited. As there is no individual as partner in LLP, nominees of any two said body corporates shall act as designated partners.

**Resident in India:** For the purposes of this section, the term "resident in India" means a person who has stayed in India for a period of not less than one hundred twenty days during the financial year.

**Example 5:** There is a LLP by the name Indian Helicopters LLP having 5 partners namely Mr. A (Non Resident), Mr. B (Non Resident) Ms. C (resident), Ms. D (resident) and Ms. E (resident). In this case, at least 2 should be named as Designated Partner out of which 1 should be resident. Hence, if Mr. A and Mr. B are designated then it will not serve the purpose. One of the designated partners should be there out of Ms. C, Ms. D and Ms. E.

2. (i) If the incorporation document
  - (a) specifies who are to be designated partners, such persons shall be designated partners on incorporation; or
  - (b) states that each of the partners from time to time of LLP is to be designated partners, every partner shall be a designated partners;
- (ii) any partner may become a designated partner by and in accordance with the LLP Agreement and a partner may cease to be a designated partners in accordance with LLP agreement.
3. An individual shall not become a designated partner in any LLP unless he has given his prior consent to act as such to the LLP in such form and manner as may be prescribed.
4. Every LLP shall file with the Registrar the particulars of every individual who has given his consent to act as designated partners in such form and manner as may be prescribed within 30 days of his appointment.
5. An individual eligible to be a designated partner shall satisfy such conditions and requirements as may be prescribed.
6. Every designated partner of the LLP shall obtain a Designated Partner Identification Number (DPIN) from the Central Government and the provisions of sections 153 to 159 of the Companies Act, 2013 shall apply mutatis mutandis for the said purpose.

## **Liabilities of Designated Partners [Section 8]**

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

- (a) responsible for the doing of all acts, matters and things as are required to be done by the limited liability partnership in respect of compliance of the provisions of this Act including filing of any document, return, statement and the like report pursuant to the provisions of this Act and as may be specified in the limited liability partnership agreement; and
- (b) liable to all penalties imposed on the limited liability partnership for any contravention of those provisions.



## **Changes in Designated Partners [Section 9]**

A limited liability partnership may appoint a designated partner within 30 days of a vacancy arising for any reason and provisions of sub-section (4) and sub-section (5) of section 7 shall apply in respect of such new designated partner, provided that if no designated partner is appointed, or if at any time there is only one designated partner, each partner shall be deemed to be a designated partner.

## **Punishment for contravention of sections 7 and 9 [Section 10]**

1. If the LLP contravenes the provisions of sub-section (1) of section 7 (meaning that the number of designated partners are less than two or none of the designated partner is a resident in India), the LLP and its every partner shall be liable to a penalty of ₹10,000 and in case of continuing contravention, with further penalty of ₹100 per day subject to maximum ₹1,00,000 for LLP and ₹50,000 for every partner of such LLP.
2. If the LLP contravenes the provisions of sub-section (4) of section 7 (failure to file the consent of appointment of designated partner within 30 days of his appointment), the LLP and its every designated partner shall be liable to a penalty of ₹5,000 and in case of continuing contravention, with further penalty of ₹100 per day subject to maximum ₹50,000 for LLP and ₹25,000 for every designated partner.
3. If the LLP contravenes the provisions of sub-section (5) of section 7 or section 9, the LLP and its every partner shall be liable to a penalty of ₹10,000 and in case of continuing contravention, with further penalty of

₹100 per day subject to maximum ₹1,00,000 for LLP and ₹50,000 for its every partner.



### **3. INCORPORATION OF LLP**

#### **Incorporation Document [Section 11]**

The most important document needed for registration is the incorporation document.

(1) For a LLP to be incorporated:

- (a) two or more persons associated for carrying on a lawful business with a view to earn profit shall subscribe their names to an incorporation document;
- (b) the incorporation document shall be filed in such manner and 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 (Incorporation documents are now processed electronically by Registrar, Central Registration Centre since 2<sup>nd</sup> October 2018); and
- (c) **Statement to be filed:**
  - there shall be filed along with the incorporation document, a statement in the prescribed form:
    - made by either an advocate, or a Company Secretary or a Chartered Accountant or a Cost Accountant, who is engaged in the formation of the LLP and
    - by any one who subscribed his name to the incorporation document,
    - that all the requirements of this Act and the rules made thereunder have been complied with,
    - in respect of incorporation and matters precedent and incidental thereto.

- (2) The incorporation document shall—
- (a) be in a form as may be prescribed;
  - (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 persons who are to be partners of the LLP on incorporation;
  - (f) state the name and address of the persons who are to be designated partners of the LLP on incorporation;
  - (g) contain such other information concerning the proposed LLP as may be prescribed.
- (3) If a person makes a statement as discussed above which he—
- (a) knows to be false; or
  - (b) does not believe to be true,
- shall be punishable (Penalty for false declaration)
- with imprisonment for a term which may extend to 2 years and
  - with fine which shall not be less than ₹10,000 but which may extend to ₹5 Lakhs.

### **Incorporation by Registration [Section 12]**

- (1) When the requirements imposed by clauses (b) and (c) of sub-section (1) of section 11 have been complied with, the Registrar shall retain the incorporation document and, unless the requirement imposed by clause (a) of that sub-section has not been complied with, he shall, within a period of 14 days—
- (a) register the incorporation document; and
  - (b) give a certificate that the LLP is incorporated by the name specified therein.

- (2) The Registrar may accept the statement delivered under clause (c) of sub-section (1) of section 11 as sufficient evidence that the requirement imposed by clause (a) of that sub-section has been complied with.
- (3) The certificate issued under clause (b) of sub-section (1) shall be signed by the Registrar and authenticated by his official seal.
- (4) The certificate shall be conclusive evidence that the LLP is incorporated by the name specified therein.

### **Registered Office of LLP and Change therein [Section 13]**

- (1) Every LLP shall have a registered office to which all communications and notices may be addressed and where they shall be received.
- (2) A document may be served on a LLP or a partner or designated partner thereof by sending it by post under a certificate of posting or by registered post or by any other manner, as may be prescribed, at the registered office and any other address specifically declared by the LLP for the purpose in such form and manner as may be prescribed.
- (3) A LLP may change the place of its registered office and file the notice of such change with the Registrar in such form and manner and subject to such conditions as may be prescribed and any such change shall take effect only upon such filing.
- (4) If the LLP contravenes any provisions of this section, the LLP and its every partner shall be punishable with penalty of ₹ 500 per day subject to maximum ₹ 50,000.



### **Effect of registration [Section 14]**

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

- i. Suing and being sued;
- ii. Acquiring, owning, holding and developing or disposing of property, whether movable or immovable, tangible or intangible;
- iii. Having a common seal, if it decides to have one; and
- iv. Doing and suffering other acts and things as bodies corporate may lawfully do and suffer.

### **Name [Section 15]**

- (1) Every limited liability partnership shall have either the words "limited liability partnership" or the acronym "LLP" as the last words of its name.
- (2) No LLP shall be registered by a name which, in the opinion of the Central Government is—
  - (a) undesirable; or
  - (b) identical or too nearly resembles to that of any other LLP or a company or a registered trademark of any other person under the Trade Marks Act, 1999.

Limited Liability  
Partnership  
LLP

### **Reservation of name [Section 16]**

- (1) A person may apply in such form and manner and accompanied by such fee as may be prescribed to the Registrar for the reservation of a name set out in the application as—
  - (a) the name of a proposed LLP; or
  - (b) the name to which a LLP proposes to change its name.
- (2) Upon receipt of an application under sub-section (1) and on payment of the prescribed fee, the Registrar may, if he is satisfied, subject to the rules prescribed by the Central Government in the matter, that the name to be reserved is not one which may be rejected on any ground referred to in sub-section (2) of section 15, reserve the name for a period of 3 months from the date of intimation by the Registrar.

### **Rectification of name of LLP [Section 17]**

1. Notwithstanding anything contained in sections 15 and 16, if through inadvertence, or otherwise, the LLP, on its first registration or on its registration by new name, is registered by a name which is identical with or too nearly resembles to—
  - (a) that of any other LLP or a company; or
  - (b) a registered trade mark of a proprietor under the Trade Marks Act, 1999

as likely to be mistaken, then on an application of such LLP or proprietor referred to in clauses (a) and (b) respectively or a company, the Central Government may direct such LLP to change its name or new name within a period of 3 months from the date of issue of such direction,

Provided that an application of the proprietor of the registered trade marks shall be maintainable within a period of 3 years from the date of incorporation or registration or change of name of the LLP under this Act.

2. Where an LLP changes its name or obtains new name, it shall within a period of 15 days from the date of such change, give notice of the change to Registrar along with the order of the Central Government, who shall carry out necessary changes in the certificate of incorporation and within 30 days of such change in the certificate of incorporation, such LLP shall change its name in the LLP agreement.
3. If the LLP is in default in complying with any direction given under sub-section (1), the Central Government shall allot a new name to the LLP and the Registrar shall enter the new name in the register of LLP in place of the old name and issue a fresh certificate of incorporation with new name.

Provided that nothing contained in this sub-section shall prevent a LLP from subsequently changing its name.

### **STEPS TO INCORPORATE LLP**

#### **Step1**

**Reservation of name of LLP:** Applicant has to file e-Form RUNLLP, for ascertaining availability and reservation of the name of a LLP.

#### **Step2**

**File e- Form FiLLiP for incorporating a new LLP:** contains the details of proposed LLP, details of partners/designated partners and their consent.

#### **Step3**

Execution of **LLP Agreement** is mandatory as per Section 23 of Act. It will be filed in **e-Form 3** within 30 days of incorporation of LLP.



## 4. PARTNERS AND THEIR RELATIONS

### Eligibility to be partners [Section 22]

On the incorporation of a LLP, the persons who subscribed their names to the incorporation document shall be its partners and any other person may become a partner of the LLP by and in accordance with the LLP agreement.

### Relationship of partners [Section 23]

- (1) Save as otherwise provided by this Act, the mutual rights and duties of the partners of a LLP, and the mutual rights and duties of a LLP and its partners, shall be governed by the LLP agreement between the partners, or between the LLP and its partners.
- (2) The LLP agreement and any changes, if any, made therein shall be filed with the Registrar in such form, manner and accompanied by such fees as may be prescribed.
- (3) An agreement in writing made before the incorporation of a LLP between the persons who subscribe their names to the incorporation document may impose obligations on the LLP, provided such agreement is ratified by all the partners after the incorporation of the LLP.
- (4) In the absence of agreement as to any matter, the mutual rights and duties of the partners and the mutual rights and duties of the LLP and the partners shall be determined by the provisions relating to that matter as are set-out in the First Schedule.



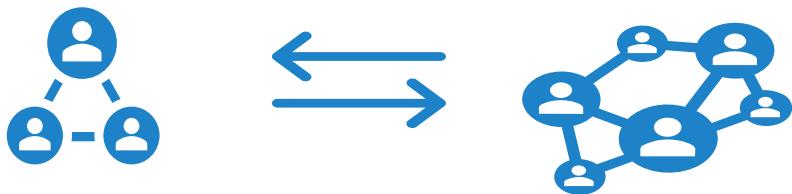
### Cessation of partnership interest [Section 24]

- (1) A person may cease to be a partner of a LLP in accordance with an agreement with the other partners or, in the absence of agreement with the other partners as to cessation of being a partner, by giving a notice in writing of not less than 30 days to the other partners of his intention to resign as partner.
- (2) A person shall cease to be a partner of a 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) Where a person has ceased to be a partner of a LLP (hereinafter referred to as "former partner"), the former partner is to be regarded (in relation to any person dealing with the LLP) as still being a partner of the LLP unless—
- (a) the person has notice that the former partner has ceased to be a partner of the LLP; or
  - (b) notice that the former partner has ceased to be a partner of the LLP has been delivered to the Registrar.
- (4) The cessation of a partner from the LLP does not by itself discharge the partner from any obligation to the LLP or to the other partners or to any other person which he incurred while being a partner.
- (5) Where a partner of a LLP ceases to be a partner, unless otherwise provided in the LLP agreement, the former partner or a person entitled to his share in consequence of the death or insolvency of the former partner, shall be entitled to receive from the LLP—
- (a) an amount equal to the capital contribution of the former partner actually made to the LLP; and
  - (b) his right to share in the accumulated profits of the LLP, after the deduction of accumulated losses of the LLP, determined as at the date the former partner ceased to be a partner.
- (6) A former partner or a person entitled to his share in consequence of the death or insolvency of the former partner shall not have any right to interfere in the management of the LLP.

**Registration of changes in partners [Section 25]**

- (1) Every partner shall inform the LLP of any change in his name or address within a period of 15 days of such change.



- (2) A LLP shall—
- where a person becomes or ceases to be a partner, file a notice with the Registrar within 30 days from the date he becomes or ceases to be a partner; and
  - where there is any change in the name or address of a partner, file a notice with the Registrar within 30 days of such change.
- (3) A notice filed with the Registrar under sub-section (2)—
- shall be in such form and accompanied by such fees as may be prescribed;
  - shall be signed by the designated partner of the LLP and authenticated in a manner as may be prescribed; and
  - if it relates to an incoming partner, shall contain a statement by such partner that he consents to becoming a partner, signed by him and authenticated in the manner as may be prescribed.
- (4) If the LLP contravenes the provisions of sub-section (2), the LLP and every designated partner of the LLP shall be liable to penalty of ₹10,000.
- (5) If any partner contravenes the provisions of sub-section (1), such partner shall be 'liable to penalty of ₹10,000.
- (6) Any person who ceases to be a partner of a LLP may himself file with the Registrar the notice referred to in sub-section (3) if he has reasonable cause to believe that the LLP may not file the notice with the Registrar and in case of any such notice filed by a partner, the Registrar shall obtain a confirmation to this effect from the LLP unless the LLP has also filed such notice.

However, where no confirmation is given by the LLP within 15 days, the registrar shall register the notice made by a person ceasing to be a partner under this section.

## **EXTENT AND LIMITATION OF LIABILITY OF LLP AND PARTNER**

**Partner as agent [Section 26]:** Every partner of a LLP is, for the purpose of the business of the LLP, the agent of the LLP, but not of other partners.

### **Extent of liability of LLP [Section 27]**

- (1) A LLP, is not bound by anything done by a partner in dealing with a person if—
  - (a) the partner in fact has no authority to act for the LLP in doing a particular act; and
  - (b) the person knows that he has no authority or does not know or believe him to be a partner of the LLP.
- (2) The LLP is liable if a partner of a LLP is liable to any person as a result of a wrongful act or omission on his part in the course of the business of the LLP or with its authority.
- (3) An obligation of the LLP whether arising in contract or otherwise, shall be solely the obligation of the LLP.
- (4) The liabilities of the LLP shall be met out of the property of the LLP.

### **Extent of liability of partner [Section 28]**

- (1) A partner is not personally liable, directly or indirectly for an obligation referred to in sub-section (3) of section 27 solely by reason of being a partner of the LLP.
- (2) The provisions of sub-section (3) of section 27 and sub-section (1) of this section shall not affect the personal liability of a partner for his own wrongful act or omission, but a partner shall not be personally liable for the wrongful act or omission of any other partner of the LLP.

### Holding out [Section 29]

(1) Any person,

- who by words spoken or written or by conduct,
- represents himself, or knowingly permits himself to be represented to be a partner in a LLP
- is liable to any person
- who has on the faith of any such representation
- given credit to the LLP, whether the person representing himself or represented to be a partner does or does not know that the representation has reached the person so giving credit.

However,

- where any credit is received by the LLP as a result of such representation,
- the LLP shall,
- without prejudice to the liability of the person so representing himself or represented to be a partner,
- be liable to the extent of credit received by it or any financial benefit derived thereon.

(2) Where after a partner's death the business is continued in the same LLP name, the continued use of that name or of the deceased partner's name as a part thereof shall not by itself make his legal representative or his estate liable for any act of the LLP done after his death.

### Unlimited liability in case of fraud [Section 30]

(1) In case of fraud:

- In the event of an act carried out by a LLP, or any of its partners,
- with intent to defraud creditors of the LLP or any other person, or for any fraudulent purpose,
- the liability of the LLP and partners who acted with intent to defraud creditors or for any fraudulent purpose

- shall be unlimited for all or any of the debts or other liabilities of the LLP.

However, in case any such act is carried out by a partner, the LLP is liable to the same extent as the partner unless it is established by the LLP that such act was without the knowledge or the authority of the LLP.

(2) Where any business is carried on with such intent or for such purpose as mentioned in sub-section (1), every person who was knowingly a party to the carrying on of the business in the manner aforesaid shall be punishable with

- imprisonment for a term which may extend to five years and
- with fine which shall not be less than ₹ 50,000 but which may extend to ₹ 5 Lakhs.



(3) Where a LLP or any partner or designated partner or employee of such LLP has conducted the affairs of the LLP in a fraudulent manner, then without prejudice to any criminal proceedings which may arise under any law for the time being in force, the LLP and any such partner or designated partner or employee shall be liable to pay compensation to any person who has suffered any loss or damage by reason of such conduct.

However, such LLP shall not be liable if any such partner or designated partner or employee has acted fraudulently without knowledge of the LLP.

### **Whistle blowing [Section 31]**

- (1) The Court or Tribunal may reduce or waive any penalty leviable against any partner or employee of a LLP, if it is satisfied that—
  - such partner or employee of an LLP has provided useful information during investigation of such LLP; or
  - when any information given by any partner or employee (whether or not during investigation) leads to LLP or any partner or employee of such LLP being convicted under this Act or any other Act.
- (2) No partner or employee of any LLP may be discharged, demoted, suspended, threatened, harassed or in any other manner discriminated against the terms and conditions of his LLP or employment merely because

of his providing information or causing information to be provided pursuant to sub-section (1).

## CONTRIBUTIONS

### Form of contribution [Section 32]

- (1) A contribution of a partner may consist of tangible, movable or immovable or intangible property or other benefit to the limited liability partnership, including money, promissory notes, other agreements to contribute cash or property, and contracts for services performed or to be performed.
- (2) The monetary value of contribution of each partner shall be accounted for and disclosed in the accounts of the limited liability partnership in the manner as may be prescribed.



### Obligation to contribute [Section 33]

- (1) The obligation of a partner to contribute money or other property or other benefit or to perform services for a limited liability partnership shall be as per the limited liability partnership agreement.
- (2) A creditor of a limited liability partnership, which extends credit or otherwise acts in reliance on an obligation described in that agreement, without notice of any compromise between partners, may enforce the original obligation against such partner.



## 5. FINANCIAL DISCLOSURES



1. Maintain proper books of account in prescribed manner.



2. File Statement of Account and Solvency within 6 months from end of each F.Y.



3. Statement of Account and Solvency shall be filed with the Registrar every year in prescribed form and manner and with prescribed fees.



4. Audit of Accounts. Central Government may exempt.

**Maintenance of books of account, other records and audit, etc.  
[Section 34]**

(1) Proper Books of account:

- The LLP shall maintain such proper books of account as may be prescribed
- relating to its affairs for each year of its existence
- on cash basis or accrual basis and
- according to double entry system of accounting and
- shall maintain the same at its registered office
- for such period as may be prescribed.

(2) Statement of Account and Solvency:

- Every LLP shall,
- within a period of 6 months from the end of each financial year,
- prepare a Statement of Account and Solvency
- for the said financial year as at the last day of the said financial year
- in such form as may be prescribed, and
- such statement shall be signed by the designated partners of the LLP.

(3) Every LLP shall file within the prescribed time, the Statement of Account and Solvency prepared pursuant to sub-section (2) with the Registrar every year in such form and manner and accompanied by such fees as may be prescribed.

(4) The accounts of LLP shall be audited in accordance with such rules as may be prescribed. However, the Central Government may, by notification in the Official Gazette, exempt any class or classes of LLP from the requirements of this sub-section.

(5) Penalty for non-compliance of provisions of sub-section 3-

LLP – ₹100 per day subject to maximum ₹1,00,000

Every Designated Partners - ₹100 per day subject to maximum ₹50,000.

- (6) Penalty for non-compliance of provisions of sub-section 1, 2 & 4 -  
 LLP – not less than ₹25,000 which may extend to ₹ 5 Lakhs.  
 Every designated partner –not less than ₹10,000 which may extend to ₹1 Lakh.

### **Accounting and auditing standards [Section 34A]**

Central Government may, in consultation with the National Financial Reporting Authority constituted under Section 132 of the Companies Act, 2013 —

- (a) Prescribe the standards of accounting; and
- (b) Prescribe the standards of auditing, as recommended by ICAI.

### **Annual Return [Section 35]**

- (1) Every LLP shall file an annual return duly authenticated with the Registrar within 60 days of closure of its financial year in such form and manner and accompanied by such fee as may be prescribed.

**Example 6:** Suppose, the financial year of a LLP closes on 31st March, 2022 then the LLP has to file an annual return with the Registrar latest by 30th May, 2022.

#### **Note**

The LLP contra-distinct from Partnership Act, 1932 has prescribed the filing of Annual Return in accordance with Companies Act, 2013. This is a new feature of the LLPs.

- (2) Penalty for non-filing of annual return –  
 LLP – ₹100 per day subject to maximum ₹1,00,000  
 Every Designated Partners - ₹100 per day subject to maximum ₹50,000

### **INSPECTION OF DOCUMENTS KEPT BY REGISTRAR [SECTION 36]**

The incorporation document, name of partners and changes, if any, made therein, Statement of Account and Solvency and annual return filed by each LLP with the Registrar shall be available for inspection by any person in such manner and on payment of such fee as may be prescribed.

### **PENALTY FOR FALSE STATEMENT [SECTION 37]**

If in any return, statement or other document required by or for the purposes of any of the provisions of this Act, any person makes a statement—

- (a) which is false in any material particular, knowing it to be false; or
- (b) which omits any material fact knowing it to be material,

he shall, save as otherwise expressly provided in this Act, be punishable with imprisonment for a term which may extend to 2 years, and shall also be liable to fine which may extend to 5 lakh rupees but which shall not be less than 1 lakh rupees.

### **POWER OF REGISTRAR TO OBTAIN INFORMATION [SECTION 38]**

- (1) In order to obtain such information as the Registrar may consider necessary for the purposes of carrying out the provisions of this Act, the Registrar may require any person including any present or former partner or designated partner or employee of a limited liability partnership to answer any question or make any declaration or supply any details or particulars in writing to him within a reasonable period.
- (2) In case any person referred to in sub-section (1) does not answer such question or make such declaration or supply such details or particulars asked for by the Registrar within a reasonable time or time given by the Registrar or when the Registrar is not satisfied with the reply or declaration or details or particulars provided by such person, the Registrar shall have power to summon that person to appear before him or an inspector or any other public officer whom the Registrar may designate, to answer any such question or make such declaration or supply such details, as the case may be.
- (3) Any person who, without lawful excuse, fails to comply with any summons or requisition of the Registrar under this section shall be punishable with fine which shall not be less than two thousand rupees but which may extend to twenty-five thousand rupees.

### **COMPOUNDING OF OFFENCES [SECTION 39]**

- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the Regional Director or any other officer not below the rank of

Regional Director authorised by the Central Government may compound any offence under this Act which is punishable with fine only, by collecting from a person reasonably suspected of having committed the offence, a sum which may extend to the amount of the maximum fine provided for the offence but shall not be lower than the minimum amount provided for the offence.

- (2) Nothing contained in sub-section (1) shall apply to an offence committed by a limited liability partnership or its partner or its designated partner within a period of three years from the date on which similar offence committed by it or him was compounded under this section.

*Explanation.*—For the removal of doubts, it is hereby clarified that any second or subsequent offence committed after the expiry of the period of three years from the date on which the offence was previously compounded, shall be deemed to be the first offence.

- (3) Every application for the compounding of an offence shall be made to the Registrar who shall forward the same, together with his comments thereon, to the Regional Director or any other officer not below the rank of Regional Director authorised by the Central Government, as the case may be.
- (4) Where any offence is compounded under this section, whether before or after the institution of any prosecution, intimation thereof shall be given to the Registrar within a period of seven days from the date on which the offence is so compounded.
- (5) Where any offence is compounded before the institution of any prosecution, no prosecution shall be instituted in relation to such offence.
- (6) Where the compounding of any offence is made after the institution of any prosecution, such compounding shall be brought by the Registrar in writing, to the notice of the court in which prosecution is pending and on such notice of the compounding of the offence being given, the offender in relation to which the offence is so compounded shall be discharged.
- (7) The Regional Director or any other officer not below the rank of Regional Director authorised by the Central Government, while dealing with the proposal for compounding of an offence may, by an order, direct any partner, designated partner or other employee of the LLP to file or register,

or on payment of fee or additional fee as required to be paid under this Act, such return, account or other document within such time as may be specified in the order.

- (8) Notwithstanding anything contained in this section, if any partner or designated partner or other employee of the LLP who fails to comply with any order made by the Regional Director or any other officer not below the rank of Regional Director authorised by the Central Government, under sub-section (7), the maximum amount of fine for the offence, which was under consideration Regional Director or such authorised officer for compounding under this section shall be twice the amount provided in the corresponding section in which punishment for such offence is provided.



## **6. ASSIGNMENT AND TRANSFER OF PARTNERSHIP RIGHTS**

### **PARTNER'S TRANSFERABLE INTEREST [SECTION 42]**

- (1) The rights of a partner to a share of the profits and losses of the limited liability partnership and to receive distributions in accordance with the limited liability partnership agreement are transferable either wholly or in part.
- (2) The transfer of any right by any partner pursuant to sub-section (1) does not by itself cause the disassociation of the partner or a dissolution and winding up of the limited liability partnership.
- (3) The transfer of right pursuant to this section does not, by itself, entitle the transferee or assignee to participate in the management or conduct of the activities of the limited liability partnership, or access information concerning the transactions of the limited liability partnership.



## **7. CONVERSION INTO LLP**

**Conversion from firm into LLP [Section 55]:** A firm may convert into an LLP in accordance with the provisions of this Chapter and the Second Schedule.

**Conversion from private company into LLP [Section 56]:** A private company may convert into an LLP in accordance with the provisions of this Chapter and the Third Schedule.

**Conversion from unlisted public company into LLP [Section 57]:** An unlisted public company may convert into an LLP in accordance with the provisions of this Chapter and the Fourth Schedule.

### **Registration and effect of conversion [Section 58]**

- (i) The Registrar, on satisfying that a firm, private company or an unlisted public company, as the case may be, has complied with the respective Schedules, provisions of this Act and the rules made thereunder, register the documents submitted under such schedules and issue a certificate of registration in such form as the Registrar may determine stating that the LLP is, on and from the date specified in the certificate, registered under this Act.
- (ii) The LLP shall, within 15 days of the date of registration, inform the concerned Registrar of Firms or Registrar of Companies, as the case may be, with which it was registered under the provisions of the Indian Partnership Act, 1932 or the Companies Act, 1956 (Now Companies Act, 2013) as the case may be, about the conversion and of the particulars of the LLP in such form and manner as may be prescribed.
- (iii) Upon such conversion, the partners of the firm, the shareholders of private company or unlisted public company, as the case may be, the LLP to which such firm or such company has converted, and the partners of the LLP shall be bound by the respective Schedules, as the case may be, applicable to them.
- (iv) Upon such conversion, on and from the date of certificate of registration, the effects of the 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 for the time being in force, on and from the date of registration specified in the certificate of registration issued under the respective Schedule, as the case may be,—

- (a) there shall be a LLP by the name specified in the certificate of registration registered under this Act;
- (b) all tangible (movable or immovable) and intangible property vested in the firm or the company, as the case may be, all assets, interests, rights, privileges, liabilities, obligations relating to the firm or the company, as the case may be, and the whole of the undertaking of the firm or the company, as the case may be, shall be transferred to and shall vest in the limited liability partnership without further assurance, act or deed; and
- (c) the firm or the company, as the case may be, shall be deemed to be dissolved and removed from the records of the Registrar of Firms or Registrar of Companies, as the case may be.

### **FOREIGN LLP**

#### **Foreign limited liability partnerships [Section 59]**

The Central Government may make rules for provisions in relation to establishment of place of business by foreign LLP within India and carrying on their business therein by applying or incorporating, with such modifications, as appear appropriate, the provisions of the Companies Act, 2013 or such regulatory mechanism with such composition as may be prescribed.



## **8. COMPROMISE, ARRANGEMENT OR RECONSTRUCTION OF LIMITED LIABILITY PARTNERSHIPS**

#### **Compromise or arrangement of limited liability partnerships [Section 60]**

- (1) Where a compromise or arrangement is proposed—
    - (a) between a limited liability partnership and its creditors; or
    - (b) between a limited liability partnership and its partners,
- the Tribunal may, on the application of the limited liability partnership or of any creditor or partner of the limited liability partnership, or, in the case of a limited liability partnership which is being wound up, of the liquidator, order a meeting of the creditors or of the partners, as the case may be, to be

called, held and conducted in such manner as may be prescribed or as the Tribunal directs.

- (2) If a majority representing three-fourths in value of the creditors, or partners, as the case may be, at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the Tribunal, by order be binding on all the creditors or all the partners, as the case may be, and also on the limited liability partnership, or in the case of a limited liability partnership which is being wound up, on the liquidator and contributories of the limited liability partnership:

Provided that no order sanctioning any compromise or arrangement shall be made by the Tribunal unless the Tribunal is satisfied that the limited liability partnership or any other person by whom an application has been made under sub-section (1) has disclosed to the Tribunal, by affidavit or otherwise, all material facts relating to the limited liability partnership, including the latest financial position of the limited liability partnership and the pendency of any investigation proceedings in relation to the limited liability partnership.

- (3) An order made by the Tribunal under sub-section (2) shall be filed by the limited liability partnership with the Registrar within thirty days after making such an order and shall have effect only after it is so filed.
- (4) If default is made in complying with the provisions of sub-section (3), the LLP and its every designated partner shall be 'liable to a penalty of ₹10,000 and in case of continuing default, with further penalty of ₹100 for each day after the first during which such default continues, subject to maximum ₹1,00,000 for LLP and ₹50,000 for every designated partner'.
- (5) The Tribunal may, at any time after an application has been made to it under this section, stay the commencement or continuation of any suit or proceeding against the limited liability partnership on such terms as the Tribunal thinks fit, until the application is finally disposed of.

**Power of Tribunal to enforce compromise or arrangement  
(Section 61)**

- (1) Where the Tribunal makes an order under section 60 sanctioning a compromise or an arrangement in respect of a limited liability partnership, it—
  - (a) shall have power to supervise the carrying out of the compromise or an arrangement; and
  - (b) may, at the time of making such order or at any time thereafter, give such directions in regard to any matter or make such modifications in the compromise or arrangement as it may consider necessary for the proper working of the compromise or arrangement.
- (2) If the Tribunal aforesaid is satisfied that a compromise or an arrangement sanctioned under section 60 cannot be worked satisfactorily with or without modifications, it may, either on its own motion or on the application of any person interested in the affairs of the limited liability partnership, make an order for winding up the limited liability partnership, and such an order shall be deemed to be an order made under section 64 of this Act.

**Provisions for facilitating reconstruction or amalgamation of limited liability partnerships [Section 62]**

- (1) Where an application is made to the Tribunal under section 60 for sanctioning of a compromise or arrangement proposed between a limited liability partnership and any such persons as are mentioned in that section, and it is shown to the Tribunal that—
  - (a) compromise or arrangement has been proposed for the purposes of, or in connection with, a scheme for the reconstruction of any limited liability partnership or limited liability partnerships, or the amalgamation of any two or more limited liability partnerships; and
  - (b) under the scheme the whole or any part of the undertaking, property or liabilities of any limited liability partnership concerned in the scheme (in this section referred to as a "transferor limited liability partnership") is to be transferred to another limited liability partnership (in this section referred to as the "transferee limited

liability partnership"), the Tribunal may, either by the order sanctioning the compromise or arrangement or by a subsequent order, make provisions for all or any of the following matters, namely:—

- (i) the transfer to the transferee limited liability partnership of the whole or any part of the undertaking, property or liabilities of any transferor limited liability partnership;
- (ii) the continuation by or against the transferee limited liability partnership of any legal proceedings pending by or against any transferor limited liability partnership;
- (iii) the dissolution, without winding up, of any transferor limited liability partnership;
- (iv) the provision to be made for any person who, within such time and in such manner as the Tribunal directs, dissent from the compromise or arrangement; and
- (v) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out:

Provided that no compromise or arrangement proposed for the purposes of, or in connection with, a scheme for the amalgamation of a limited liability partnership, which is being wound up, with any other limited liability partnership or limited liability partnerships, shall be sanctioned by the Tribunal unless the Tribunal has received a report from the Registrar that the affairs of the limited liability partnership have not been conducted in a manner prejudicial to the interests of its partners or to public interest:

Provided further that no order for the dissolution of any transferor limited liability partnership under clause (iii) shall be made by the Tribunal unless the Official Liquidator has, on scrutiny of the books and papers of the limited liability partnership, made a report to the Tribunal that the affairs of the limited liability partnership have not been conducted in a manner prejudicial to the interests of its partners or to public interest.

- (2) Where an order under this section provides for the transfer of any property or liabilities, then, by virtue of the order, that property shall be transferred

to and vest in, and those liabilities shall be transferred to and become the liabilities of, the transferee limited liability partnership; and in the case of any property, if the order so directs, freed from any charge which is, by virtue of the compromise or arrangement, to cease to have effect.

- (3) Within thirty days after the making of an order under this section, every limited liability partnership in relation to which the order is made shall cause a certified copy thereof to be filed with the Registrar for registration.
- (4) If default is made in complying with the provisions of sub-section (3), the LLP and its every designated partner shall be 'liable to a penalty of ₹10,000 and in case of continuing contravention, with further penalty of ₹100 for each day after the first during which such default continues, subject to maximum ₹1,00,000 for LLP and ₹50,000 for every designated partner'.

*Explanation:* (i) In this section "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 AND DISSOLUTION**

**Winding up and dissolution [Section 63]:** The winding up of a LLP may be either voluntary or by the Tribunal and LLP, so wound up may be dissolved.

**Circumstances in which LLP may be wound up by Tribunal [Section 64]:** A LLP may be wound up by the Tribunal:

- (a) if the LLP decides that LLP be wound up by the Tribunal;
- (b) if, for a period of more than six months, the number of partners of the LLP is reduced below two;
- (c) if the LLP has acted against the interests of the sovereignty and integrity of India, the security of the State or public order<sup>1</sup>;
- (d) if the LLP has made a default in filing with the Registrar the Statement of Account and Solvency or annual return for any five consecutive financial years; or

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<sup>1</sup> Omitted by the Insolvency and Bankruptcy Code, 2016 (w.e.f. 15.11.2016)

- (e) if the Tribunal is of the opinion that it is just and equitable that the LLP be wound up.

**Rules for winding up and dissolution [Section 65]:** The Central Government may make rules for the provisions in relation to winding up and dissolution of LLP.



## 10. MISCELLANEOUS

**Business Transactions of Partner with LLP [Section 66]:** A partner may lend money to and transact other business with the LLP and has the same rights and obligations with respect to the loan or other transactions as a person who is not a partner.

### Application of the Provisions of the Companies Act [Section 67]

- (1) The Central Government may, by notification in the Official Gazette, direct that any of the provisions of the Companies Act, 2013 specified in the notification—
  - shall apply to any LLP; or
  - shall apply to any LLP with such exception, modification and adaptation, as may be specified, in the notification.
- (2) A copy of every notification proposed to be issued under sub-section (1)
  - shall be laid in draft before each House of Parliament, while it is in session,
  - for a total period of 30 days which may be comprised in one session or in two or more successive sessions, and
  - if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification,
  - the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses.

### **Payment of Additional Fee [Section 69]**

Any document or return required to be registered or filed under this Act with Registrar, if, is not registered or filed in time provided therein, may be registered or filed after that time, on payment of such additional fee as may be prescribed in addition to any fee as is payable for filing of such document or return:

Provided that such document or return shall be filed after the due date of filing, without prejudice to any other action or liability under this Act:

Provided further that a different fee or additional fee may be prescribed for different classes of limited liability partnerships or for different documents or returns required to be filed under this Act or rules made thereunder.

### **Enhanced Punishment [Section 70]**

In case a limited liability partnership or any partner or designated partner of such limited liability partnership commits any offence, the limited liability partnership or any partner or designated partner shall, for the second or subsequent offence, be punishable with imprisonment as provided, but in case of offences for which fine is prescribed either along with or exclusive of imprisonment, with fine which shall be twice the amount of fine for such offence.



## **11. DIFFERENCES WITH OTHER FORMS OF ORGANISATION**

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

	<b>Basis</b>	<b>LLP</b>	<b>Partnership firm</b>
1.	<b>Regulating Act</b>	The Limited Liability Partnership Act, 2008.	The Indian Partnership Act, 1932.
2.	<b>Body corporate</b>	It is a body corporate.	It is not a body corporate,
3.	<b>Separate legal entity</b>	It is a legal entity separate from its members.	It is a group of persons with no separate legal entity.

4.	<b>Creation</b>	It is created by a legal process called registration under the LLP Act, 2008.	It is created by an agreement between the partners.
5.	<b>Registration</b>	Registration is mandatory. LLP can sue and be sued in its own name.	Registration is voluntary. Only the registered partnership firm can sue the third parties.
6.	<b>Perpetual succession</b>	The death, insanity, retirement or insolvency of the partner(s) does not affect its existence of LLP. Members may join or leave but its existence continues forever.	The death, insanity, retirement or insolvency of the partner(s) may affect its existence. It has no perpetual succession.
7.	<b>Name</b>	Name of the LLP to contain the word limited liability partners (LLP) as suffix.	No guidelines. The partners can have any name as per their choice.
8.	<b>Liability</b>	Liability of each partner limited to the extent to agreed contribution except in case of willful fraud.	Liability of each partner is unlimited. It can be extended up to the personal assets of the partners.
9.	<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.
10.	<b>Designated partners</b>	At least two designated partners and at least one of them shall be resident in India.	There is no provision for such partners under the Indian Partnership Act, 1932.
11.	<b>Common seal</b>	It may have its common seal as its official signatures.	There is no such concept in partnership.

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12.41

12.	<b>Legal compliances</b>	Only designated partners are responsible for all the compliances and penalties under this Act.	All partners are responsible for all the compliances and penalties under the Act.
13.	<b>Annual filing of documents</b>	LLP is required to file: <ul style="list-style-type: none"> <li>(i) Statement of accounts and solvency (to be filed annually)</li> <li>(ii) Annual return with the registration of LLP every year.</li> </ul>	Partnership firm is not required to file any annual document with the registrar of firms.
14.	<b>Foreign partnership</b>	Foreign nationals can become a partner in a LLP.	Foreign nationals cannot become a partner in a partnership firm.
15.	<b>Minor as partner</b>	Minor cannot be admitted to the benefits of LLP.	Minor can be admitted to the benefits of the partnership with the prior consent of the existing partners.

**DISTINCTION BETWEEN LLP AND LIMITED LIABILITY COMPANY**

	<b>Basis</b>	<b>LLP</b>	<b>Limited Liability Company</b>
1.	<b>Regulating Act</b>	The LLP Act, 2008.	The Companies Act, 2013.
2.	<b>Members/ Partners</b>	The persons who contribute to LLP are known as partners of the LLP.	The persons who invest the money in the shares are known as members of the company.
3.	<b>Internal governance structure</b>	The internal governance structure of a LLP is governed by contract agreement between the partners.	The internal governance structure of a company is regulated by statute (i.e., Companies Act, 2013).

4.	<b>Name</b>	Name of the LLP to contain the word "Limited Liability partnership" or "LLP" as suffix.	Name of the public company to contain the word "limited" and Pvt. Co. to contain the word "Private limited" as suffix.
5.	<b>No. of members/partners</b>	Minimum – 2 members  Maximum – No such limit on the members in the Act. The members of the LLP can be individuals/or body corporate through the nominees.	<b>Private company:</b>  Minimum – 2 members  Maximum 200 members  <b>Public company:</b>  Minimum – 7 members  Maximum – No such limit on the members.  Members can be organizations, trusts, another business form or individuals.
6.	<b>Liability of members/partners</b>	Liability of a partners is limited to the extent of agreed contribution in case of intention is fraud.	Liability of a member is limited to the amount unpaid on the shares held by them.
7.	<b>Management</b>	The business of the company is managed by the partners including the designated partners authorized in the agreement.	The affairs of the company are managed by board of directors elected by the shareholders.
8.	<b>Minimum number of directors/designated partners</b>	Minimum 2 designated partners	Pvt. Co. – 2 directors  Public co. – 3 directors

## **SUMMARY**

- ◆ **Applicability:** From 31<sup>st</sup> March, 2009 (Extends whole of India)
- ◆ **Non- Applicability:** The Indian Partnership Act, 1932 to LLPs.
- ◆ **Who can be a partner in LLP:** Any individual or body corporate may be a partner in a LLP. But not, person of unsound mind, undischarged insolvent; or who has applied to be adjudicated as an insolvent.
- ◆ **Minimum partners:**
  1. Two partners.
  2. If LLP carries on business for more than 6 months with only one partner, he shall be liable personally for the obligations of the LLP incurred during that period.
- ◆ **Designated Partners:**
  1. At least two designated partners who are individuals and at least one of them shall be a resident in India.
  2. Resident in India: a person who has stayed in India for a period of not less than 120 days during the financial year.
- ◆ **Registration of conversion to LLP**
  1. Registrar, on satisfying, will register the documents and issue a certificate of registration.
  2. Information of conversion to Registrar of Firms or Companies by LLP, within 15 days from registration.
  3. Upon such conversion, provisions of LLP will be applicable.
- ◆ **Effect of Registration of conversion**
  1. There shall be a LLP by name specified in certificate of registration.
  2. All tangible (movable or immovable) and intangible property of firm or the company, shall vest in LLP 3. Firm or company shall be deemed to be dissolved.

◆ **Name of LLP:**

1. Use of words "**limited liability partnership**" or "**LLP**" as the last words of its name.
2. **No LLP** registration by a name which, **in the opinion of the CG** is—
  - a) undesirable; or
  - b) identical or too nearly resembles to any other partnership firm or LLP or company or a registered trade mark.

◆ **Change of name of LLP:** If name of registered LLP is **identical or too nearly resembles** to any other partnership firm or LLP or company or a registered trade mark, **CG may direct such LLP to change its name within 3 months.** (On Application)

◆ Extent & Limitation of Liability of LLP & Partner

- **Partner as agent:** Agent of the LLP, but not of other partners.
- **Liability of LLP:**
  1. LLP not bound by anything done by a partner if Partner has no authority.
  2. Obligation of the LLP shall be solely the obligation of the LLP.
  3. Liabilities of LLP shall be met out of the property of LLP.
- **Liability of partner:**
  1. Partner is not personally liable for obligations of the LLP.
  2. Partner is personally liable for his own wrongful act or omission
- **Unlimited liability in case of Fraud:**
  1. If act carried out by a LLP or partner to defraud creditors, liability of LLP and partners shall be unlimited.
  2. Penalty: imprisonment upto 5 years and fine of ₹50,000 to ₹5 Lakhs.
  3. Defaulted person also liable to pay compensation.

## **TEST YOUR KNOWLEDGE**

### **MCQ Based Questions**

1. Which of the following cannot be converted into LLP?
  - (a) Partnership firm
  - (b) Private company
  - (c) Listed company
  - (d) Unlisted company
2. The approved name of LLP shall be valid for a period of \_\_\_ from the date of approval:
  - (a) 1 Month
  - (b) 2 Months
  - (c) 3 months
  - (d) 6 months
3. Name of the Limited Liability Partnership shall be ended by:
  - (a) Limited
  - (b) Limited Liability partnership or LLP
  - (c) Private Limited
  - (d) OPC
4. Which one of the following statements about limited liability partnerships (LLPs) is incorrect?
  - (a) An LLP has a legal personality separate from that of its members.
  - (b) The liability of each partner in an LLP is limited.
  - (c) Members of an LLP are taxed as partners.
  - (d) A listed company can convert to an LLP.
5. For the purpose of LLP, Resident in India means:
  - (a) Person who has stayed in India for a period of not less than 182 days during the current year.

- (b) Person who has stayed in India for a period of not less than 180 days during the immediately preceding one year.
- (c) Person who has stayed in India for a period of not less than 181 days during the immediately preceding one year
- (d) Person who has stayed in India for a period of not less than 120 days during the financial year.

## Descriptive Questions

1. "LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership". Explain.
2. Mr. Ankit Sharma wants to form a LLP taking him, his wife Mrs. Archika Sharma and One HUF as partners for that. Whether this LLP can be incorporated under LLP Act, 2008? Explain.
3. There is an LLP by the name Ram Infra Development LLP which has 4 partners namely Mr. Rahul, Mr. Raheem, Mr. Kartar and Mr. Albert. Mr. Rahul and Mr. Albert are non – resident while other two are resident. LLP wants to take Mr. Rahul and Mr. Raheem as Designated Partner. Explain in the light of Limited Liability Partnership Act, 2008 whether LLP can do so?
4. Mr. Mudit is the creditor of Devi Ram Food Circle LLP. He has a claim of ₹10,00,000 against the LLP but the worth of the assets of LLP are only ₹7,00,000. Now Mr. Mudit wants to make the partners of LLP personally liable for the deficiency of ₹3,00,000. Whether by virtue of provisions of Limited Liability Act, 2008, Mr. Mudit can claim the deficiency from the partners of Devi Ram Food Circle LLP?
5. M/s Vardhman Steels LLP was incorporated on 01.09.2022. On 01.01.2023, one partner of a partnership firm named M/s Vardhimaan Steels is registered with Indian Partnership Act, 1932 since 01.01.2000 requested ROC that as the name of LLP is nearly resembles with the name of already registered partnership firm, the name of LLP should be changed. Explain whether M/s Vardhman Steels LLP is liable to change its name under the provisions of Limited Liability Act, 2008?
6. Kanik, Priyansh, Abhinav and Bhawna were partners in Singh Jain & Associates LLP. Abhinav resigned from the firm w.e.f. 01.11.2022 but this was not informed to ROC by LLP or Abhinav. Whether Abhinav will still be liable for the loss of firm of the transactions entered after 01.11.2022?

## ANSWERS

### Answers to MCQ based Questions

1	(c) Listed company
2	(c) 3 months
3	(b) Limited Liability partnership or LLP
4	(d) A listed company can convert to an LLP
5	(d) Person who has stayed in India for a period of not less than 120 days during the financial year

### Answers to Descriptive Questions

- LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership

**Limited Liability:** 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 of the LLP Act, 2008). The liability of the partners will be limited to their agreed contribution in the LLP, while the LLP itself will be liable for the full extent of its assets.

**Flexibility of a partnership:** The LLP allows its members the flexibility of organizing their internal structure as a partnership based on a mutually arrived agreement. The LLP form enables entrepreneurs, professionals and enterprises providing services of any kind or engaged in scientific and technical disciplines, to form commercially efficient vehicles suited to their requirements. Owing to flexibility in its structure and operation, the LLP is a suitable vehicle for small enterprises and for investment by venture capital.

- Section 5 of Limited Liability Partnership Act, 2008 provides any individual or body corporate may be a partner in an LLP. However, an individual shall not be capable of becoming a partner of a LLP, if—
  - he has been found to be of unsound mind by a Court of competent jurisdiction and the finding is in force;
  - he is an undischarged insolvent; or
  - he has applied to be adjudicated as an insolvent and his application is pending.

Further, Section (2)(1)(d) provides that a **Body Corporate** it means a company as defined in 'clause (20) of section 2 of the Companies Act, 2013 and includes—

- (i) an LLP registered under this Act;
- (ii) an LLP incorporated outside India; and
- (iii) a company incorporated outside India,

but does not include—

- (i) a corporation sole;
- (ii) a co-operative society registered under any law for the time being in force; and
- (iii) any other body corporate (not being a company as defined in 'clause (20) of section 2 of the Companies Act, 2013' or a limited liability partnership as defined in this Act), which the Central Government may, by notification in the Official Gazette, specify in this behalf.

Therefore, HUF is not covered in the definition of body corporate and cannot be partner in LLP.

3. According to Section 7 of LLP Act, 2008 every LLP shall have at least two designated partners who are individuals and at least one of them shall be a resident in India. Further, explanation to the section provides, the term "resident in India" means a person who has stayed in India for a period of not less than one hundred twenty days during the financial year. Hence, in the given problem, Mr. Rahul and Mr. Raheem, can be appointed as designated partners.
4. A limited liability partnership is a body corporate formed and incorporated under this Act and is a legal entity separate from that of its partners. The LLP itself will be liable for the full extent of its assets but the liability of the partners will be limited. Creditors of LLP shall be the creditors of LLP alone. In other words, creditors of LLP cannot claim from partners. The liability of the partners will be limited to their agreed contribution in the LLP. Hence the creditors of Devi Ram Food Circle LLP are the creditors of Devi Ram Food Circle LLP only. Partners of LLP are not personally liable towards creditors. Mr. Mudit can not claim his deficiency of ₹ 3,00,000 from the partners of Devi Ram Food Circle LLP.

5. Section 15 of LLP Act, 2008 provides no LLP shall be registered by a name which, in the opinion of the Central Government is—
- undesirable; or
  - identical or too nearly resembles to that of any other 'LLP or a company or a registered trade mark of any other person under the Trade Marks Act, 1999'.

Further, section 17 provides, if the name of LLP is identical with or too nearly resembles to—

- that of any other LLP or a company; or
- a registered trade mark of a proprietor under the Trade Marks Act, 1999

then on an application of such LLP or proprietor referred to in clauses (a) and (b) respectively or a company, the CG may direct that such LLP to change its name within a period of 3 months from the date of issue of such direction.

Following the above provisions, LLP need not change its name if its name resembles with the name of a partnership firm. These provisions are applicable only in case where name is resembles with LLP, company or a registered trade mark of a proprietor.

Hence, M/s Vardhman Steels LLP need not change its name even it resembles with the name of partnership firm.

6. According to section 24(3), where a person has ceased to be a partner of a LLP (hereinafter referred to as "former partner"), the former partner is to be regarded (in relation to any person dealing with the LLP) as still being a partner of the LLP unless—
- the person has notice that the former partner has ceased to be a partner of the LLP; or
  - notice that the former partner has ceased to be a partner of the LLP has been delivered to the Registrar.

Hence, by virtue of the above provisions, as no notice of resignation was given to ROC, Abhinav will still be liable for the loss of firm of the transactions entered after 01.11.2022.