

## THE LIMITED LIABILITY PARTNERSHIP ACT

~~introduction of LLP Act (2008) in India was made by Parliament, not by state govt.~~

~~Company law is as to Partnership = LLP~~

(separate legal entity) of (Flexibility) (Hybrid)  
 (Perpetual succession) (Mutual liability - form of  
 (Common seal) (Agency) Business)  
 (Capacity to sue <sup>on</sup> or be sued)

~~(Liability limited) AOM is no advantage since it's  
 (Rigid, costly) everywhere to start a business  
 (Lots of Govt. intervention)~~

~~Requirements include, publishing of minimum  
 Minimum  $\rightarrow$  2 Partners (Individuals / Body corporates)  
 Maximum  $\rightarrow$  No limit  
 Minor  $\rightarrow$  Not allowed  
 Minimum Designated partner  $\rightarrow$  2 (Individuals -  
 At least 1 D.P. must be  
 resident of India)~~

Designated partner - who is liable in case of non  
 compliance of legal provisions by LLP.

Eg. 1.  $\frac{1}{\text{India}} + \frac{1}{\text{India}} = \text{LLP } (2P, 2DP)$

2.  $\frac{1}{\text{India}} + \frac{1}{\text{India}} + \frac{1}{\text{India}} + \frac{1}{\text{India}} + \frac{1}{\text{India}} = \text{LLP } (25P, 2DP)$   
 (Any out of 5)

Indians

Mininum Part. 2 Min<sup>m</sup>. DP = 2 Individuals

Max Part.  $\infty$  Max DP = No limit.

Date 1/1

3.  $\underbrace{\text{ } + \text{ } + \text{ } + \text{ } + \text{ }}_{\text{Non resident}} \underbrace{\text{ } + \text{ } + \text{ }}_{\text{Resident}} \Rightarrow \text{LLP} [5P, 2DP]$   
(It must be resident of India)
4. Indian + Foreigner = LLP
5. Indian + Foreigner ≠ Partnership
6. Foreigner + Foreigner ≠ LLP
7. Foreigner + Foreigner = Company
8. Individual + A Ltd ≠ LLP (2P, 1DP)
9. Individual + Individual + A Ltd + B Ltd = LLP (4P, 2DP)
10. Individual + A Ltd = LLP (2P, 2DP)  
(Nominee)  $\text{ } + \text{ }$
11. Individual + LLP + Individual = LLP (3P, 2DP)
12.  $\underbrace{\text{LLP} + \text{LLP}}_{\text{Nominee}} = \text{LLP} (2P, 2DP)$
13. Firm (+  $\text{ } + \text{ } + \text{ } + \text{ }$ ) ≠ LLP (Firm x)

## CHAPTER 1 BASICS

### \* MEANING

A 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.

Since LLP contains elements of both 'a corporate structure' as well as 'a partnership firm structure' LLP is called a hybrid between a co. & a partnership.

### Partner [Section 2(g)]

Partner, in relation to a LLP, means any person who becomes a partner in the LLP in accordance with the LLP agreement.

### 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 he has been found to be of unsound mind by a court of competent jurisdiction & 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.

### Minimum Number of partners (Section 6)

- Every LLP shall have at least two partners
- If at any time the number of partners of a LLP is reduced below two & the LLP carries on business for more than six months while the no. is so reduced, the person, who is the only partner of the LLP during the time that it is so carrying on business after those six months and has the knowledge of that fact that it is carrying on business with him alone, shall be liable personally for the obligations of the LLP incurred during that period.

Designated Partner [section 2 (j)]

"Designated partner" means any partner designated as such pursuant to section 7.

### Designated Partners (Section 7)

- Every LLP shall have at least two designated partners who are individuals & at least one of them shall be a resident in India.
- If in LLP, all the partners are bodies corporate or in which one or more partners are individuals & bodies corporate, at least two individuals who are partners of such LLP or nominees of such bodies corporate 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 182 days during the immediately preceding one year.

Eg. There is an LLP by the name Indian Helicopters LLP having 5 partners namely Mr A (non-resident), Mr B (Non resident) Ms C (resident), Mr D (resident) & 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 & Mr B are designated then it will not serve the purpose. One of the designated partners should be there out of Ms C, Mr D & Ms E.

Name (Section 15): 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 Govt is -

- (a) undesirable; or
- (b) identical or so nearly resembles to that of any other partnership firm or LLP or body corporate or a registered trade mark which is the subject matter of an application for registration under the Trade marks Act, 1999.

Reservation of name (Section 16)

A person may apply in such form & manner & accompanied by such fee as may be prescribed to the Registrar for the issue & 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 & 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, reserve the name for a period of 3 months from the date of intimation by the Registrar.

### Change of name of LLP (Section 17)

1. Notwithstanding anything contained in section 15 & 16, where the Central Govt. is satisfied that a LLP has been registered (whether through inadvertence or otherwise and whether originally or by a change of name) under a name which is -
  - (a) undesirable; or
  - (b) identical or too nearly resembles to that of any other partnership firm or LLP or body corporate or a registered trade mark, on a trade mark which is the subject matter of an application for registration under the Trade Marks Act, 1999.
- the Central Govt. may direct such LLP to change its name, and the LLP shall comply with the Central said direction within 3 months after the date of the direction or such longer period as the Central Govt. may allow.
2. (i) Any LLP which fails to comply with a direction given under sub-section (1) shall be punishable with fine which shall not be less than Rs 10,000 but which may extend to Rs 5 lakhs.  
(ii) The designated partner of such LLP shall be punishable with fine which shall not be less than Rs 10,000 but which may extend to Rs 1 lakh.

## DIFFERENCE BETWEEN LLP AND PARTNERSHIP

BASIS	LLP	PARTNERSHIP
Regulating Act	The Limited Liability Partnership Act, 2008	The Indian Partnership Act, 1932
Name	Name of the LLP to contain the word limited liability partnership or LLP as suffix.	No guidelines. The partners can have any name as per their choice.
Separate Legal Entity	It is a legal entity separate from its members.	It is a group of persons with no separate legal entity.
Creation	It is created by legal process called incorporation under LLP Act 2008.	It is created by an agreement between the partners.
Registration / Incorporation	Registration is mandatory.	Registration is voluntary.
Mutual agency	Each partner can bind the LLP by his own acts but not the other persons partners.	Each partner can bind the firm as well as other partners by his own acts.

Designated partners 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 Partnership Act, 1932

Minor as partner Minor cannot be admitted to partnership To the benefits of LLP. Minor can be admitted to the benefits of the partnership with prior consent of the existing partners.

"Foreign" Partnership Foreign nationals cannot become a partner in a LLP. Foreign nationals cannot become a partner in a partnership firm.

Liability Liability of each partner limited to the extent to which he has agreed contribution be extended upto the personal assets of the partners except in case of willful or fraud.

## DIFFERENCE BETWEEN LLP AND LIMITED LIABILITY CO.

SE BASIS	LLP	LIMITED LIABILITY CO.
Regulating Act	The LLP Act, 2008	The Companies Act 2013
Members/Partners	The person who contribute to LLP are known as partners of the LLP.	The person who invest the money in the shares are known as members of the co.
Name	Name of the LLP to contain the word "Limited liability part." or "LLP" as suffix.	Name of the pub. co. to contain word "limited" & Pvt. co. to contain the word "Pvt. Ltd" as suffix.
No. of members	Minimum - 2 numbers Maximum - No such limit on the members in the Act.	Private co. Minimum - 2 numbers Maximum = 200 memb. Pub. co. Minimum - 2 memb Maxm - no such limit on the members.
Minimum no. of directors /designated partners	Minimum 2 dirs designated partners.	Pvt. co - 2 directors Pub. co. - 3 directors
Internal governance structure	The internal governance structure of a LLP is governed by contract agreement b/w partners	The internal governance structure of a co. is regulated by statute (i.e. Co Act 2013) & AOA of the co.

Management	The business of the co. managed by the partners including the designated partners authorized in the agreement.	The affairs of the co. are managed by BODs elected by the shareholders.
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Buss. notice Profit only. Return may or may not be for Characteristics of LLP

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 and is a legal entity separate from that of its partners.
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 - The LLP as a separate legal entity, 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. No mutual agency - No partner is liable on account of the independent or un-authorized actions of other partners. In other words, all partners will be the agents of the LLP alone. No one partner can bind the other partners 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 & duties shall be governed by the provisions of the LLP Act, 2008.

6. Artificial legal person - A LLP is an artificial legal person. 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 - 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 - The liability of the partners will be limited to their agreed contribution in the LLP. Such contribution may be of tangible or intangible nature or both.

9. Management of Business - The partners in the LLP are entitled to manage the business of LLP. But only the designated partners are responsible for legal compliances.
10. Minimum and Maximum Number of partners - Every LLP shall have least 2 partners & 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. Foreign LLPs - section 2(1)(m) defines foreign limited liability partnership "as a limited liability partnership formed, incorporated or registered outside India which established as place of business within India". Foreign LLP can become a partner in an Indian LLP.

#### Advantages of LLP form

- 1. LLP form is a form of business model which
- is organised and operates on the basis of an agreement.
- provides flexibility without imposing detailed legal and procedural requirements.
- Easy to form
- All partners enjoy limited liability
- Flexible capital structure
- Easy to dissolve

### ~~FRP~~ WHISTLE BLOWING (Section 31)

1. The court or Tribunal may reduce or waive any penalty liable or against any partner or employee of a LLP, if it is satisfied that -  
such partner or employee of a 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 under subsection (1).

### BODY CORPORATE [Section 2(d)]

It means a comp. as defined in section 3 of the Companies Act, 1956 (now Companies Act, 2013) and includes -

- a LLP registered under this Act.
- a LLP incorporated outside India; and
- a comp. incorporated outside India, but does not include
  - a corporation sole
  - a co-operative society registered under any law for time being in force; and
  - any other body corporate which the Cent. Govt may, by notification in the Official Gazette, specify in this behalf.

### BUSINESS [Section 2(e)]

"Business" includes every trade, profession, service & occupation.

### FINANCIAL YEAR [Section 2(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.

Eg. If a LLP has been incorporated on 15th Oct 2017, then its financial year may be from 15th Oct, 2017 to 31/3/19

### FOREIGN LLP [Section 2(m)]

It means a LLP formed, incorporated or registered outside India which establishes a place of business within India.

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.