

oldbiv

bibdi

Date 1/1

CHAPTER - 2

[(S) viable] ~~seminar~~
[(S) viable] ~~R&Y JOURNAL~~
~~introduction Business INCORPORATION, CONVERSION, WINDING UP &~~
~~Misc.~~

Incorporation of LLP

Incorporation document (Section 11) : The most important document needed for registration is the incorporation document.

Sub-Sub-1 For a LLP to be incorporated:

- two or more persons associated for carrying on a lawful business with a view to profit shall subscribe their names to an incorporation document.
- the incorporation document shall be filed in prescribed manner and fees to the Registrar of the state in which the registered office of the LLP is to be situated ; and
- 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 CS or a CA 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 & the rules made thereunder have been complied with in respect of incorporation

Date 1/1

2. The incorporation document shall -

- be in a form as may be prescribed
- state the name of the LLP
- state the proposed business of the LLP.
- state the address of the registered office of the LLP.
- state the name and address of each of the persons who are to be partners of the LLP on incorporation.
- state the name and address of the persons who are to be designated partners of the LLP on incorporation.
- contain such other information concerning the proposed LLP as may be prescribed.

3. If a person makes a statement as discussed above which he -

- knows to be false; or
- does not believe to be true, shall be punishable
 - with imprisonment for a term which may extend to 2 years and
 - with fine which shall not be less than Rs 10,000 but which may extend to Rs 5 lakhs.

II. Incorporation by registration (Section 12)

1. When the requirements imposed by section 11 have been complied with, the Registrar shall retain the incorporation document & 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 section 11 as sufficient evidence that the requirement imposed under this Act relating to incorporation has been complied with.
 3. The certificate issued by Registrar shall be signed by the Registrar and authenticated by his official seal.
 4. The certificate shall be conclusive on evidence that the LLP is incorporated by the name specified therein.
- Q. Write down the Provisions relating to incorporation of LLP.

Ans. Section 11 & 12

Steps of Incorporate LLP

1. Name Reservation
 - The first step to incorporate Limited Liability Partnership (LLP) is reservation of name of LLP.
 - Applicant has to file e-Form 1 for ascertaining availability & reservation of the name of a LLP business.

Incorporate LLP

- After reserving a name, user has to file e-Form 2 for incorporating a new Limited Liability Partnership (LLP)
- e-Form 2 contains the details of LLP proposed to be incorporated, partners' / designated partners' details & consent of the partners' / designated partners to act as partners / designated partners.

3. LLP Agreement

- Execution of LLP Agreement is mandatory as per sect. 23 of this Act.
- LLP agreement is required to be filed with the registrar in e-Form 3 within 30 days of incorporation of LLP.

(4) Effect of Registration (Section 14)

On registration, a LLP shall, by its name, be capable of:

1. buying and being sued
2. acquiring, owning, holding and developing or disposing of property, whether movable or immovable, tangible or intangible.
3. having a common seal, if it decides to have one; and
4. doing & suffering such other acts and things as bodies corporate may lawfully do and suffer.

Essential elements to incorporate an LLP

Under the LLP Act, 2008, the following elements are very essential to form a LLP in India.

- To complete & submit incorporation document in the form prescribed with the Registrar electronically;
- To have at least two partners for incorporation of LLP (Individual or body corporate);
- To have registered office in India to which all communications will be made & received;

- To appoint minimum two individuals as designated partners who will be responsible for number of duties including doing of all acts, matters & things as are required to be done by the LLP. At least one of them should be resident in India.
- A person or nominee of body corporate intending to be appointed as designated partner of LLP should hold a Designated Partner For Identification No. (DPIN) allotted by Ministry of Corporate Affairs.
- To execute a partnership agreement between the partners inter se or between the LLP and its partners. In the absence of any agreement, the provisions as set out in First Schedule of LLP Act, 2008 will be applied.

Winding Up and Dissolution

Winding up and dissolution (Section 63)

The winding up of a LLP may be either voluntary or by the Tribunal.

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

A LLP may be wound up by the Tribunal :

- if the LLP decides that LLP be wound up by the Tribunal
- if, for a period of more than six months, the number of partners of the LLP is reduced below two;
- if the LLP is unable to pay its debts

- if the LLP has acted against the interests of the sovereignty & integrity of India, the security of the state or public order.
- 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
- if the Tribunal is of the opinion that it is just & equitable that the LLP be wound up.

Rules for winding up and dissolution (Section 65)

The Central Govt. may make rules for the provisions in relation to winding up & dissolution of LLP.

Financial Disclosures (Section 34 & 35)

Maintenance of books of accounts, other records and audit, etc. (Section 34) :

1. Proper Books of account
 - The LLP shall maintain such proper books of accounts as they 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 & 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 & solvency for 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 with the Registrar every year in prescribed form and manner and along by prescribed fees.

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

5. Any LLP which fails to comply with the provisions of this section shall be punishable with fine which shall not be less than 25,000 but which may extend to 5 Lakhs.

Every designated partner of such LLP shall be punishable with fine which shall not be less than 10,000 but which may extend to 1 Lakh.

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 prescribed form and manner and along by prescribed fees.

e.g. suppose, the financial year of a LLP closes on 31st March, 2020 then the LLP has to file an annual return with the Registrar latest by 30/5/2020

2. Any LLP which fails to comply with the provisions of this section shall be punishable with fine which shall not be less than 25000 but which may extend to 5 lakhs. Every designated partner of such LLP shall be punishable with fine which shall not be less than 10,000 but which may extend to 1 lakh.

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 on 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 & any other address specifically declared by the LLP for the purpose in such form & 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 prescribed form and manner & any such change shall take effect only upon such filing.
4. If the LLP contravenes any provisions of this section, the LLP & its every partner shall be punishable with fine which shall not be less than 2,000 but which may extend to 25000.

Date 1/1

Conversion into LLP

Conversion from firm into LLP (Section 55):
A firm may convert into a LLP in accordance with the provisions of this chapter and the second schedule.

Conversion from private company into LLP (Section 56)
A pvt. co. may convert into a LLP in accordance with the provisions of this chapter & the third schedule.

Conversion from unlisted pub. co. into LLP (Section 57)
An unlisted pub. co. may convert into a LLP in accordance with the provisions of this chapter & the fourth schedule.

Registration & effect of conversion (Section 58):

1. The Registrar, on satisfying that a firm, pvt co. or an unlisted pub. co., as the case may be, has complied with the provisions of the various schedules, provisions of this Act & the rules made thereunder register the documents & 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.
2. 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 Part. Act 1932 or the Co. Act 2013 as the case may be, about the conversion & and of the particulars of the LLP in such form & manner as may be prescribed.

3. Upon such conversion, the partners of the firm, the shareholders of pvt. co. or unlisted pub. co. shall be bound by the provision of LLP Act, 2008.
4. Upon such conversion, on & from the date of certificate of registration, the effects of the conversion shall be such as specified in the various schedules, as the case may be.

Effect of Registration / Conversion

Notwithstanding anything contained in any other law for the time being in force, on & from the date of registration specified in the certificate of registration issued under the various schedule ; as the case may be -

1. there shall be a LLP by the name specified in the certificate of registration under this Act.
2. all tangible (movable or immovable) & intangible property vested in the firm or the co. as the case may be, all assets, interests, rights, privileges, liabilities, obligations relating to the firm or the co. as the case may be shall be transferred to the limited liability partnership without further act or deed ; and
3. the firm or co. as the case may be, shall be deemed to be dissolved & removed from the records of the Registrar of Firms or Registrar of cos. , as the case may be.

Holding Out (Section 29)

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 induced the person so giving credit.

However,

- where any credit is received by the LLP as a result of such representation.
- the LLP shall
- without affecting to the liability of the person so representing himself 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 of itself make his legal representative or his estate liable for any act of the LLP done after his death.

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 & any other person may become a partner of the LLP by and in accordance with the LLP agreement.

Relationship of partners (Section 23)

1. The mutual rights & duties of the partners of a LLP & the mutual rights & duties of a LLP & its partners shall be governed by the LLP agreement between the partners, or between the LLP & its partners.
2. The LLP agreement & any changes, if any, made therein shall be filed with the Registrar in prescribed form & manner along with prescribed fees.
3. An agreement in writing made before the incorporation of a LLP between the persons 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 & duties of the partners & the mutual rights & duties of the LLP & the partners shall be determined by the provisions given in the first schedule.

Cessation of partnership interest (Section 24)

TP 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, by giving a notice in writing of not less than 30 days to the other partners of his intention to resign as partner.

TP 2:

A person shall cease to be a partner of a LLP-

- on his death or dissolution of the LLP; or
- if he is declared to be of unsound mind by a competent court; or
- 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 -

- the person has noticed 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.

4. The cessation of a partner from the LLP does not by itself discharge the partner for from any obligation to the LLP or to the other partners or to any other 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 is 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 -
 - a) 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
 - b) 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.

- (2000 - 25000) → LLP, DP.
- Partners → LLP → 30 days → Registrar
- (Name/ address (2000-25000) about change about
change) in name or to become on
address of cease to be
to change relationship with Partner a partner
to cancel partnership to withdraw with notice
3. A notice filed with the Registrar under sub-section (2)
 - (a) shall be in prescribed form along with prescribed fees.
 - (b) shall be signed by the designated partner of the LLP and authenticated in a manner as may be prescribed; and
 - (c) if it relates to an incoming partner, shall contain a statement by such partner that he consents to becoming a partner, signed by him & authenticated in that 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 punishable with fine which shall not less than 2000 but which may extend to 25000.
 5. If any partner contravenes the provisions of sub-section (1), such partner shall be punishable with fine which shall not be less than 2000 but which may extend to 25000.
 6. Any person who claims to be a partner of a LLP may himself file with the Registrar the notice, if he has reasonable cause to believe that the LLP may

not file the notice with the Registrar the notice, if he and in case of any such notice filed by a partner, the Registrar shall obtain a confirmation to this effect from the LLP.

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

Extent And Limitations 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 ^{and} with its authority.

3. An ~~or~~ 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 merely by reason of being a partner of the LLP.

2. The provisions of section 27 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.

~~unf~~ 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 & 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 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 affecting 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.

MISCELLANEOUS TOPICS (Read only)

Business transactions of partners 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 Cnt. Govt. may, by notification in the Official Gazette, direct that any of the provisions of the Companies Act, 1956²⁰¹³ specified in the notification -
- shall apply to any LLP ; or
 - shall apply to any LLP with such exception, modification & 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.

Electronic filing of documents (Section 68):

Any document required to be filed, recorded or registered under this Act may be filed, recorded or registered in such manner & subject to such conditions as may be prescribed.

Payment of additional fee (Section 69)

Any document or return required to be filed or registered under Act with Registrar, if, is not filed or registered in time provided therein, may be filed or registered after that time upto a period of 300 days from the date within which it should have been filed, on payment of additional fee of 100 for every day of such delay in addition to any fee as is payable for filing of such document or return. However, such document or return may, without prejudice to any other action or liability under this Act, also

~~be filed after such period of 30 days on payment of fee & additional fee specified in this section.~~

PAST YEARS QUESTIONS

Q1. State the circumstances under which a LLP and its partners may face unlimited liability under the Limited liability Partnership Act, 2008 (5M)

Ans. As per Section 30 of the Limited Liability Partnership Act, 2008, LLP & its Partners may face unlimited liability in case of fraud. According to this section -

Q2. "LLP is an alternative corporate business form that gives the benefits of limited liability of a co. & the flexibility of a partnership". Explain (5M)

Ans. LLP is an alternative corporate business form that gives the benefits of limited liability of a co. & 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 & enterprises, to form commercial agreement suited to their requirements. Owing to flexibility in its structure and operation, the LLP is a suitable vehicle for small enterprises & for investment by venture capital.

Q3. Explain the essential elements to incorporate a LLP & the steps involved therein under the LLPAct 2008.

Ans.

Q4. Discuss the conditions under which LLP will be liable & not liable for the acts of the partner (5M)

Ans. → Conditions under which LLP will be liable [Section 27(2) of the LLP Act, 2008]

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.

→ Conditions under which LLP will not be liable [Section 27 (1) of the LLP Act 2008]

A LLP is not bound by anything done by a partner in dealing with a person if -

- the partner in fact has no authority to act for the LLP in doing a particular act; and
- the person knows that he has no authority or does not know or believe him to be a partner of the LLP.

Q5. State the circumstances under which LLP may be wound up by the Tribunal under the LLP Act, 2008. (5M)

Ans Section 64

DIFFERENCE B/W PARTNERSHIP AND COMPANY

BASIS	PARTNERSHIP	JOINT STOCK COMPANY
1. Legal Status	A firm is not legal entity i.e. it has no legal personality of its constituent members.	A comp. is a separate legal entity distinct from its members.
2. Agency	In a firm, every partner is an agent of the other partners as well as of the firm.	In a co., a member is not an agent of the other members or of the co., his actions do not bind either.
3. Distribution of profits	The profits of the firm must be distributed among the partners according to the terms of the partnership portion of the profits, deed.	There is no such compulsion to distribute its profits among its members. Some but generally not the entire profit, become distributable among the shareholders only when dividends are declared.
4. Extent of liability	In a partnership, the liability of the partners is unlimited.	In a co. limited by shares, the liab. of SH is limited to the amt. if any, unpaid on his shares, but in the case of a guarantee co, the liab. is limited to the amt. which he has agreed to be liable. However there may be cos. where the liability of members is unlimited.

5. Transfer of shares.

A share in a partnership cannot be transferred without the consent of all the partners.

In a co. a SH may transfer his shares, subject to the provisions contained in its Articles. In the case of pub. limited cos. whose shares are quoted on the stock exchange, the transfer is usually unrestricted.

6. Registration

Registration is not compulsory in the case of partnership.

A co. cannot come into existence unless it is registered under the Companies Act, 2013.