

## Lesson 12: Limited Liability Partnership Act, 2008

### 1. Concept of LLP

|                             |  |  |
|-----------------------------|--|--|
| <b>Definition of LLP</b>    | The Limited Liability Partnership Act, 2008(LLP Act) does not provide an exhaustive definition. As per Section 2(n) of the Act states that “ <b>Limited Liability Partnership</b> ” means a partnership formed and registered under this Act.  |  |
| <b>Advantages of LLP</b>    | <b>Easy Formation</b>  | Forming LLP is an easy process. It is less complicated and time consuming as compared to the process of formation of a company.  |
|                             | <b>Liability</b>   | <ul style="list-style-type: none"> <li>• The partners of the LLP is having limited liability which means partners are not liable to pay the debts of the company from their personal assets.</li> <li>• No partner is responsible for any other partner's misconduct.</li> </ul> |
|                             | <b>Perpetual succession</b>  | <ul style="list-style-type: none"> <li>• Life of the Limited Liability Partnership is not affected by death, retirement or insolvency of the partner.</li> <li>• LLP will get wound up only as per provisions of the LLP Act.</li> </ul>   |
|                             | <b>Easy transferability of ownership</b>   | <ul style="list-style-type: none"> <li>• No restriction upon joining and leaving the LLP.</li> <li>• Easy to admit as a partner and to leave the firm/ to easily transfer the ownership to others.</li> </ul>  |
|                             | <b>Easy to wind-up</b>   | Not only is it easy to start, it is also easier to wind-up an LLP as compared to a private limited company.  |
|                             | <b>Flexible agreement</b>  | The partners are free to draft the agreement as they please with regard to their rights and duties.  |
|                             | <b>Few compliance requirements</b>   | LLP is much easier and cheaper to run than a private limited company as there are just three compliances per year as compared to private limited company .   |
|                             | <b>No compulsory audit required</b>  | In the case of LLP there is no mandatory audit required. The audit is required only in those cases where the turnover of the company exceeds Rs 40,00,000 and where the contribution exceeds Rs 25,00,000.   |
|                             | <b>Taxation</b>  | <ul style="list-style-type: none"> <li>• LLP is not subject to Dividend Distribution Tax (DDT).</li> <li>• Distributed profits in the hands of the partners are not taxable.</li> </ul>  |
| <b>Disadvantages of LLP</b> | <ul style="list-style-type: none"> <li>• Restricted Access to Capital Markets.</li> <li>• LLP must file its Annual Returns, Financial Statements etc to the Registrar of LLPs annually which is generally available on public portal accessed and used by competitors to improve their own business.</li> <li>• LLP defaulted in filings its statement of accounts and annual return with the Registrar of LLPs willing to shut down its operations and wind up will have to make its default good first by filing necessary e-forms with late filing fee.</li> <li>• If non – resident Indian and a Foreign National willing to form a LLP in India must have one person resident in India to act as Designated Partner.</li> </ul> |  |

## 2. Formation of LLP

### Incorporation Procedure of LLP

**Step 1: Name reservation:** There are two options of reserving name of the proposed LLP:

**Option 1:** File an application under Form LLP-RUN for ascertaining availability and reservation of the name of an LLP.

**Option 2:** Name can be proposed in **e-form FiLLiP**, an application for incorporation of LLP.

**Step 2: Procure DSC and DIN:**

- Procurement of DSC and DIN for the individuals acting as Designated Partners of LLP.
- Person who already has a DIN is not required for obtaining any new DIN.
- Existing DIN to be used for Designated Partner. However, DIN should have all latest details such as resident of India, name, address etc.
- Any person proposed to become the Designated Partner in a new LLP shall have to make an application through e-form FiLLiP up to two Designated Partners in case of proposed Designated Partners not having approved DIN.

**Step 3: Filing form FiLLiP:**

- After reserving a name under LLP-RUN, applicant should file e-form FiLLiP for incorporating a new LLP.
- E-form FiLLiP contains the details of LLP proposed to be incorporated, Partners'/ Designated Partners' details and consent of the Partner/ Designated Partners to act as Partners/ Designated Partners. On approval of the Form RoC will issue the certificate of incorporation.
- On examining Form FiLLiP if registrar shall give intimation to the applicant to remove the defects and re-submit the e-form within fifteen days from the date of such intimation given by the Registrar.
- After re-submission of the document, if the Registrar still finds that the document is defective or incomplete in any respect, he shall give one more opportunity of fifteen days time to remove such defects or deficiencies. However, total period for re-submission of documents shall not exceed thirty days.

### Documents to be attached with Form FiLLiP:

- Consent of partners;
- Certified true copy of board resolution passed by such body corporate partners in case of partners are body corporate;
- Proof of address of registered office of LLP;
- Subscribers' sheet including consent;
- Detail of LLP(s) and/ or company(s) in which partner/ designated partner is a director/ partner;
- Copy of approval obtained from any sectoral regulator/in-principle approval;
- Identity and address proof of individuals acting as Partner and/or Designated Partner;
- List of main objects of an LLP.

### 3. LLP Agreement

|  |   |
|--|---|
| <b>Definition of LLP Agreement</b>             | <b>Section 2(1)(O) of the Limited Liability Partnership Act, 2008 defines it as under:</b><br><b>“LLP Agreements” mean</b> <ul style="list-style-type: none"><li>▪ any written agreement</li><li>▪ between the partners of the Limited Liability Partnership or</li><li>▪ between the Limited Liability Partnership and its partners</li><li>▪ which determines mutual rights and duties of the partners and</li><li>▪ their rights and duties in relation to that limited liability partnership.</li></ul>   |
| <b>Ways to Draft and prepare LLP Agreement</b> | <ul style="list-style-type: none"><li>• LLP agreement defines the roles, responsibilities, rights, and powers of the partners to LLP and to each other.</li><li>• LLP agreement clarifies the managerial, operational as well administrative responsibilities and sets clear methodologies for decision making, adding a new partner and disassociation of existing partner.</li><li>• Draft the agreement and print it on a Stamp paper of requisite value. Value of Non-judicial Stamp Paper depends on the state in which Registration of LLP is done and on the amount of capital contribution.</li><li>• All partners should sign the agreement at the bottom of all pages along-with two witnesses should sign the agreement at the end of the document.</li><li>• Each partner should be provided a copy of the agreement.</li></ul> |

### 4. Alteration in LLP Agreement

**Step 1:** Passing resolution approving the revision in the LLP Agreement.

**Step 2:** File Form 3 with the Registrar within 30 days of the amendment in the agreement.

**Documents to be attached to the Form 3 shall include the following:**

1. Initial LLP Agreement;
2. Supplementary/ Altered agreement;
3. Optional attachments, if any.

### 5. Annual Compliance of LLP

|   |   |
|---|---|
| <b>Filing of Annual Return</b>                                | <ul style="list-style-type: none"><li>▪ Annual returns are filed in Form 11.</li><li>▪ This form is a summary of the management affairs of the LLP such as number of partners and their names. Form 11 needs to be filed within 60 days of the closure of the Financial year i.e. on or before 30th May every year by the LLP.</li><li>▪ In case the annual turnover of the LLP crosses Rs 5 crores or the Capital contribution from Partners exceeds more than Rs 50 Lakhs the Annual return should be accompanied by a Certificate from Practising Company Secretary.</li><li>▪ Penalty for non-filing of these forms with the ROC is Rs. 100 per day per form.</li></ul> |
| <b>Filing of Statement of Accounts or Financial Statement</b> | <ul style="list-style-type: none"><li>▪ All LLPs are required to maintain their Books of Accounts in Double Entry System.</li></ul>   |

|                                      |  |
|--------------------------------------|--|
|                                      | <ul style="list-style-type: none"> <li>Also need to prepare a Statement of Solvency (Accounts) every year ending on 31st March.</li> <li>LLP Form 8 should be filed with the Registrar of Companies on or before 30th October every year.</li> <li>LLPs whose annual turnover exceeds Rs. 40 lakh or whose contribution exceeds Rs. 25 lakh are required to get their accounts audited by a qualified Chartered Accountant mandatorily.</li> <li>Penalty for non-filing of these forms with the ROC is Rs. 100 per day per form.</li> </ul>  |
| <b>Filing of Income Tax Returns</b>  | <ul style="list-style-type: none"> <li>Every LLP is required to close its financial year on 31st March every year as per the Income Tax Act and is also required to file their returns with the Income Tax Department.</li> <li>Maintenance of book of accounts is mandatory for LLP irrespective of annual turnover.</li> <li>LLP whose annual turnover exceeds Rs. 40 lakhs or capital contribution exceeds Rs. 25 Lakhs are required to get their accounts audited under the provisions of the Income Tax Act.</li> <li>It is mandatory for LLP to file return of income electronically under digital signature if its accounts are required to be audited under Section 44AB of the Income Tax Act.</li> </ul> |
| <b>Due dates to file ITR for LLP</b> | <ul style="list-style-type: none"> <li>LLP who is required to get its accounts audited under the Income-tax Act or under any other law: <b>Due date September 30 of the assessment year.</b></li> <li>LLP who is required to furnish a report in Form No. 3CEB under Section 92E of Income Tax Act: <b>Due date November 30 of the assessment year.</b></li> <li>In any other case: <b>Due date July 31 of the assessment year.</b></li> </ul>   |

| <b>6. Event Based Compliances for LLP</b>   |  |
|---|--|
| <b>Consent &amp; Particulars of Partner/ Designated Partner under Section 7(3) &amp; (4).</b> | Filing of consent of Partner/ Designated Partner to act as such with the Registrar of Companies in E Form- 4 within 30 days of the appointment as the designated partner   |
| <b>Vacancy of Designated Partner under Section 9</b>  | Filing of vacancy in Designated Partner within 30 days of vacancy and intimation of same to Registrar in E Form- 4 and in case if no designated partner being appointed or if any time there is only one designated partner, then each partner shall be deemed to be the designated partner. |
| <b>Change of Registered Office under Section 13(3)</b>  | File the notice of any change in registered office with the Registrar of Companies in E Form - 15 within 30 days of shifting and any such change shall take effect only upon such filing.  |
| <b>Change of Name under Section 19</b>  | LLP may change its name registered with the Registrar by filing with the Registrar notice of such change in E Form- 5 within 30days of such change.  |
| <b>LLP Agreement &amp; Changes therein under Section 23</b>                                   | LLP Agreement and any changes made therein shall be filed with the Registrar in E Form-3 within 30days of incorporation of LLP or such alteration of LLP agreement.  |

|  |   |
|--|---|
| <b>Change in Designated Partners<br/>under Section 25(2)</b> | Where a person becomes or ceases to be a partner or where there is any change in the name or address of a partner, notice of the same signed by the designated partner and to be filed within 30 days to the Registrar in E Form - 4. |
|--|---|

\*\*\*\*\*