LIMITED LIABILITY PARTNERSHIP

1. Parliament Passed LLP Bill on 12th Dec 2008.
2. President has assented Bill on 7th Jan 2009
3. Provisions came into force on 31st March, 2009.
4. Extends to whole of India

⇒ LLP Act, 2008 → 14 chapters

- 81 Sections
- 4 Schedules
  - 1st → Mutual Rights & Duties of partners in absence of formal agreement
  - 2nd → Conversion of firm into LLP
  - 3rd → Conversion of Pvt. Co to LLP
  - 4th → Conversion of Unlisted public co. into LLP

⇒ What is LLP? [Sec 2(1)(n)]

Defines 'LLP' as a partnership formed and registered under LLP Act.

⇒ Authorities? Ministry of Corporate Affairs
Registrar of companies

→ Features?

(i) alternative corporate business
(ii) perpetual Succession
(iii) Seperate Legal Entity
(iv) Limited Liability
(v) Artificial Legal Person
(vi) Mutual Agency
(vii) Common Seal
(viii) Profit motive
(ix) Body Corporate
(x) Allowed conversion to company & Vice-Versa
(xi) foreign LLP can become partner in Indian LLP

* Sec 5: Who may be a partner in LLP?

→ (i) Individuals or (ii) Body Corporate

(i) Individuals ↓

Disqualified if:
(i) Unsound Mind
(ii) undischarged insolvent
(iii) applied to be adjudicated as an insolvent.

(ii) Body Corporate ↓

Includes:
(i) LLP
(ii) LLP incorporated o/s India
(iii) companies
(iv) company incorporated o/s india

Does not includes:
(i) corporation sole
(ii) co-operative society

* Sec 6: Minimum number of partners

1. Alleast two partners
2. At any time → reduced to below two &
   - carries on business more than
   - 6 months

the only partner carrying on business & has knowledge of the fact
↓
be liable personally for the obligations of LLP incurred during that period.

* Sec 7: Designated partners

1. At least two $\boxed{\text{designated partners}}$ → Individual
   → atleast one should be resident (i.e stayed >182 days prev year)

$\boxed{\text{* Amendment: stay > 120 days during FY}}$

2. All partners are Body Corporate or
One or more partners are Body Corporate
↓
atleast two individual partners
or nominees of Body Corporate
↓
Shall act as Designated Partners.

3. If Incorporation document specifies → Such persons
If Inc. document specifies – each of the partners from time to time
→ every partner

* Any partner may become or cease to be a designated partner in accordance with LLP agreement.

4. Filing Requirements
1. Individual → Give consent to become Designated Partner
→ in form 9
2. Consent → particulars of such person file in FORM-4.
→ consent to be filed in FORM 2 along with fee.

* Disqualifications
(i) has at any time within preceeding 5 Years
↳ adjudged insolvent
↳ Suspended payment to his creditors & has not made a composition

(ii) has not been convicted → for offence involving moral turpitude
→ imprisonment for not less than 6 months.

(iii) convicted → offence u/s 30

* Liabilities of Designated Partners
  → responsible for all the doing of all acts
  → liable to all penalties imposed on LLP

* Vacancy (Sec 9)
  May appoint a DP → within 30 days
  ↳ file consent & satisfy pres. conditions & requirements

* Contravention of Sec 7 & Sec 9 → Penalty u/s 10
  (i) contravenes Sec 7(1) → Fine not less than 10000
  may extend to 5 lakhs

  (ii) contravenes provisions of → fine not less than 10000
  may extend to 1 lakh

INCORPORATION of LLP

Steps to Form LLP:
(i) Reservation of Name
(ii) Submissions of incorporation documents
(iii) Registration of LLP

* Reservation of Name [Sec 16]

1. Apply in LLP form No. 1 + payment of fee Rs 200
2. Upon receipt → if satisfied Registrar may Reserve the name
3. Inform applicant for reservation or non-reservation of new name or changed name
   → within seven days of receipt of application.

   → Reservation period → 3 months

* Submission of Incorporation document

Sec 11(1) : Atleast → two or more persons
→ lawful business
→ profit motive

Sec 11(2): Contents of Incorporation Document
(i) Name of LLP
(ii) Proposed business
(iii) Registered office address
(iv) Name & address of partners
(v) Name & address of designated partners
(vi) other prescribed

* Registration fees

Contribution	Fees
upto 1 Lakh	500
1lac - 5lac	2000
5 lac - 10 lac	4000
above 10 lac	5000

* CA, CS, CMA or advocate → must declare compliance with LLP act & Rules.

* Penalty for False statements
  - Imprisonment → upto 2 years
  - Fine → 10,000 to 5 lacs.

⇒ Registration Sec 12(1)

1. If all requirements are met:
   Registrar will retain incorporation
   within 14 days
   - → Registr the incorporation document
   - → Issue a certificate confirming LLP incorporation

   * Registrar may accept a professional's statement. as proof of compliance

   * LLP Incorporation certificate → Conclusive Evidence

   * May Reject if Name
     - → Undesirable
     - → Identical or too similar

   * Register maintained for LLPs.
     - → list in order of registration
     - → Every LLP is assigned unique LLPIN in consecutive series.

* Effect of Registration (Sec 14)

Becomes capable of :-

1. Suing and be sued
2. Aquiring, ouning, holding & developing or disposing } property
3. common seal
4. Doing & Suffering such other acts → Body Corporate

* Name Requirements

1. Limited liability partnership or LLP → End of the name
2. All invoices & official correspondance bear:
   (a) Name & address of registered office
   (b) Statement that is registered with LLP.

* Penalty → Contravention of
  1. Sec 13 & Sec 21 → Fine 2000 to 25000
  2. Sec 20 → 50000 to 5lacs

* Service of Documents (Sec 13(2))

1. Post 2. Electronic Commmunication 3. Courier

Registered office

may declare an additional address

→ consent of all partner required

→ Intimate Registrar
Form -12, 30days
effective from date of filing

* address must have pincode & email ID

* Change of Registered office

Sec 13(3) → procedure laid down in agreement
↓
If agreement does not provide
consent of all partners is needed

Change within Same State
↓
after consent
Notify Registrar
Form 15, 30 days

From One State to another
↓
→ Consent of Secured creditors
→ Notify Registrar
Form 15, 30 days
→ Public notice is Required → Published
(a) english
(b) local language

If it involves shifting jurisdiction from One Registrar to Another
↓
Form no. 15 → Both current & new Registrar

* Change of Name

1. Follow LLP agreement
2. If not → consent of all partners
3. Submit Form 5 within 30 days
4. Approval → New Certificate of Incorporation
5. effective → Date of issuance

* Application for Direction to LLP with Similar Name

1. Apply to Registrar → Form 23
2. Provide Details → LLPIN, CIN or reg. Number
   → Original name
   → Grounds for objection
3. Attach supporting documents
   → Authorisation
   → Copy of incorporation

* Partners & LLP Agreement

1. LLP is governed by LLP agreement

Partners
who subscribed to incorporation doc.

Agreement
pre incorporation agreement must be ratified by all partners
* File in Form 3 within 30 days.

* Changes in LLP Agreement
  → File Form 3 within 30 days of the change.

* Abscence of LLP Agreement

1. equal profit share
2. LLP shall indemnify each partner for personal liabilities incurred on behalf of firm
3. Partners shall indemnify LLP for any loss caused by his fraud.
4. Management rights → every partner
5. NO Remuneration
6. Admission of partner → consent of all partners
7. Decision making → majority vote
8. Decisions must be recorded in minutes within 30 days
9. Partner cannot engage in competiting business
10. Any personal benefit from LLP - without consent ↳ must account for
11. Expulsion → cannot unless express agreement provide for such power
12. Disputes → refer to Arbitration

* Change in partners in LLP (Sec 25)

Partners, change in name or address } Inform LLP within 15 days } Form 6 → Non compliance Fine 2000 – 25000

LLP shall inform →
(i) partner joins or leaves
(ii) change in name / address of partners
} File notice with Registrar within 30 days } Form 4 → Non compliance fine 2000 - 25000

* New partner joins → Form 4 → include Consent statement
* CA, CMA, CS → certify details are verified from records.

* Cessation of a Partner in an LLP (Sec 24)
  1. As per agreement
  2. No agreement → Resign → atleast 30 day's notice
  3. Other grounds
     (i) Death
     (ii) Dissolution of LLP
     (iii) Unsound mind
     (iv) applies to be adjudged as an insolvent or is declared insolvent.

⇒ After Cessation
(i) Still considered as partner unless:
→ public notice is given
→ filed with Registrar

· (ii) Still liable for all the acts done during they were a partner.

⇒ Entitlements of Ceased partner
(i) Capital Contribution
(ii) Share of profits

* Right of Ceased partner
→ can file notice of cessation with Registrar himself, within 15 days.

* Liabilities of LLP [Sec 27 & Sec 29(2)]

(i) Partner commits any wrongful act or ommission } LLP is liable to any affected person

(ii) Obligation of LLP → Solely obligation of LLP

(iii) LLP is not liable if
→ partner has no authority &
→ other party knows or unaware of him being a partner

(iv) Someone represents himself as a partner &

Sec 29(2) { → LLP recieves credit or financial benefit based on such → liable to that extent

(iv) LLP's liabilities must be settled using LLP's property.

* Liabilities of Partner in LLP

(i) Personally liable for his own wrongful act or omission

(ii) Not liable for wrongful acts or omissions of other partners in LLP

Sec 29(2) → as above

* Penalty → Fraud → Imprisonment → upto 2years
Fine → 50000 to 500000

* Reduction or waiver of penalty

→ Reduce / waive penalties if partner or employee:
(i) Provides useful information during an investigation
(ii) Helps in convicting the LLP, a partner, or an employee

→ No partner can be discharged, demoted, suspended harassed or discriminated against providing such information.

* Partner's Contribution to LLP

① → Every partner must contribute
  ↳ Tangible or intangible
  → Movable or Immovable
  → Others

② Must be recorded in LLP's Account

③ Valued by → Practicing CA, CMA, or Approved Valuer

* Maintenance of Books of Accounts (sec 34 & Rule 24)

(i) Must maintain proper Accounts each financial year. Sufficient to:
  ↳ Show & explain LLP transactions
  ↳ enable designated partner to ensure compliance

Filing Annual statements
(i) file an Annual statement of Account & Solvency
(ii) Accounts of LLP shall be audited unless exempted
(iii) CG can exempt

* Statement of Account & Solvency (Form 8)

(i) File form 8 within 30 days from the end of Six months of the finanancial year.

(ii) must be signed by designated partners

(iii) DP deemed to have approved it unless they can prove that they took all reasonable steps to prevent approval.

* If FY closed on 31.03.2011 → file Statement [within 60 days from end of 6 months of the Financial Year]

* Audit of Accounts

1. Mandatory Audit
2. Exemption from Audit if:
   (a) Turnover is 40 lacs or less in a FY
   (b) contribution does not exceed 25 lacs
3. may get audit done voluntarily
4. If no Audit :→ Include a statement of Account & Solvency acknowledging their responsibility for maintaining Books of Accounts
   → Provide certificate FORM No. 8.

* Appointment of Auditors

1. Who? → CA in practice
2. First FY → Before end of first FY
   Subsequent Years → Before → atleast 30 days before the end of each financial years
3. If fails to appointed by DP → partners can make appt.
4. Tenure → till new auditor is appointed or reappointed

* Reappointment of Auditor
  → Existing auditor will be deemed reappointed
  Unless:

(a) LLP agreement requires a formal requirement

(b) Majority of partners decide againt reappointment and give notice

* Mode of Notice: hard copy or electronic form
* Same rules apply to removal & Resignation
* Remuneration: fixed by DP or LLP agreement

→ Removal of an Auditor in LLP
  → May remove at any time - if specified in LLP agreement
  → If Agreement is Silent → Consent of all partners

→ Resignation of an Auditor
1. Submit a written notice.
   (If notice for Non-Reappointment → atleast 14 days before deadline for appointing new auditor
2. Resignation must include a statement explaining the circumstances of Resignation
3. Effective Date → Date the notice is deposited or later date specified in notice

⇒ Filing of Annual Return
→ FORM-11 + fees prescribed
1. Turnover upto 5 crore or contribution upto 50 lac
→ certified by Designated partner
2. Exceeding these limits
→ certified by CS in practice

* Penalty for Non-compliance → fine 10000 to 1 lakh

⇒ Documents available for Public Inspection
1. Incorporation Document
2. Name of Partners & Changes
3. Statement of Account & Solvency
4. Annual Return

⇒ False statement in LLP Documents
Imprisonment → upto 2 years
Fine → between 1 lac to 5 lacs

⇒ Registrars power to Obtain information
↳ can require any person to:
(a) Answer questions
(b) Make declarations
(c) Provide details or particulars

⇒ Compounding of Offences
1. CG may → offence punishable with fine only
* Amount collected cannot exceed the maximum fine prescribed.

→ Preservation of LLP Records

Permanently

(i) Incorporation Doc.
(ii) Notice of situation of Reg. office
(iii) LLP Agreement & Changes
(iv) Notice of other address for Service of Doc.

21 Years

* Papers, Registers, Refund orders, correspondance related to LLP liquidation Accounts.

5 Years

* Copies of Government orders Related to LLP
* Registered Document of fully wound-up LLPs.

5 Years (Continue)

* Papers related to Legal Proceedings
* Copies of statistical Returns
* All correspondence → scrutiny, annual return, prosecutions, Complaints
* Statement of Compliance by advocates, CS, CA, CMA
* Annual Return
* Consent to act as a designated partner
* Copy of Tribunal orders (U/S 60, 61, 62)
* Registered Document of LLPs struck off
* Copy of Tribunal order for LLP dissolution

3 Years

* All other.
* Routine correspondence

* For prosecution matters → the retention period is counted from the date of disposal of the case.

⇒ Destruction of Records
- → May destroy after preservation period
- → Prior approval from Registrar is required
- → Maintain Register for destroyed documents
  - ↳ Brief particulars + Date & Mode of Destruction

CONVERSION

I. From Firm into LLP

Conditions

(i) comply with 2nd Schedule

(ii) all existing partners of the firm must be partners in LLP.

* Registrar can refuse registration.

* Appeal can be filed against refusal before Tribunal.

Procedure

(i) Submit FORM-17
- (a) Nam & Reg No.
- (b) Date of Regn
- (c) Inc. Doument

(ii) Registrar verifies & issues COR in FORM 19

(iii) Inform ROF → within 15 days of Conversion

II FROM PVT Co. or Unlisted Co to LLP

Conditions

(i) No security interest exist in its assets at the time of application

(ii) All shareholders of the company become the only partners

Procedure

(i) Submit FORM 18

(ii) Registrar will verify and issue COR Form 19

(iii) Intimate ROC within 15 days.

→ Effects of Conversion into LLP
(i) LLP is created under the name specified
(ii) Automatic transfer of Assets & Liabilities to newly registered LLP.
(iii) Dissolution of previous Entity.

→ Notification of property transfer
→ If any property was registered with any authority, LLP must:
(i) Inform the relevant authority
(ii) Provide details of LLP & its registration
(iii) Submit the notification

→ Legal proceedings after Conversion
↳ will continue in the name of LLP
→ LLP will assume all rights & liabilities
→ proceedings can be completed & enforced

→ Effects of Conversion : Contractual Implications
(i) Continuance of Convictions, Rulings & Judgements
(ii) All agreements will now be applicable to LLP
(iii) Existing Contracts will continue
(iv) Employment contracts will remain valid
(v) Existing Appointments, Authority & Power will continue.

⇒ Post conversion Compliance
For 12 months, not later than 14 days
* Official correspondance must include
(a) A statement that LLP was converted with Date of Conversion
(b) Name & Reg no. of Company prior

* Penalty
→ 10000 to 1 lakh
→ 50-500 per day of default

★ FOREIGN LLP

→ refers to an LLP that is formed, incorporated or registered outside India but establishes a place of business within India.

→ Registration

(i) File form No.27 within 30 days of setting business place in India.

Include:

(i) Certificate of Incorporation
(ii) Registered office address in Home country
(iii) Principal business address in India
(iv) List of partners & Designated partners

→ Certification Requirement → must be certified by:

Commonwealth Countries

(i) government official responsible
(ii) Notary public
(iii) designated LLP officer

Hague Apostille Convention

(i) apostilled under Hague convention
(ii) Partner's and Indian reprensentatives details must be notarised & apostilled.

Non commonwealth

(i) government official
(ii) a notary public
(iii) LLP officer

★ Additional Authentication

★ Certification by Diplomatic or Consular officer.
★ No officer → Commissioners of oaths Act.

* Foreign LLP Compliance & Reporting

1. Report any alteration in structure, office, partners

File form No. 28 within 60 days of financial year end
- (i) Constitution / governing doc.
- (ii) Principal or registered office abroad
- (iii) Partners or designated partners

File form No. 29 within 30 days of occurence
- (i) COI or COR
- (ii) Authorised representatives accepting notices in India
- (iii) Principal place of business

2. If documents are not in English translation must be attached.
   Translation → outside India → authorised
   Inside India → certified by:
   (a) Advocate, CA, CS, CMA
   (b) A person filing an affidavit confirming his expertise.

*3. Must file financial statements in form 8 within 30 days from end of six months of financial year.

4. Mandatory Business Name Display
   ↳ Name & Country of Incorporation in all Invoices, official correspondance & publications.

5. Service of Documents → designated Indian Residents
   If no such person: → existing business address
   → post → last known place of business

6. Registration Certificate → FORM No. 30
7. Cessation of Business in India → Must:
   (i) File form 29 within 30 days
   (ii) ensure all pending filings are completed

COMPROMISE or ARRANGEMENT

(1.) Canbe proposed b/w:
→ LLP & its creditors
→ LLP & its partners

(2.) Who can apply?
→ LLP, any creditor, any partner, Liquidator

(3.) Application: Affidavit + proposed compromise or arrangement FORM 20.

(4) If LLP is not the applicant, summons & affidavits must be served to:
→ (a) LLP (b) Liquidator (as the case may be)
→ at least 14 days before the hearing
→ FORM No. 21

TRIBUNAL DIRECTIONS → on hearing the sommon

1. Determining creditor/partners whose meeting is required → Fix time & Place.
2. Appoint chairman + Fixing quorum & procedure
3. Value of creditors + Issue notice
4. Fix time limit for chairman to report meeting's result.

⇒ PROCEDURE FOR Compromise or Arrangement

1. Notice of Meeting: Send individually to creditors or partners by Chairman/LLP
   → Via Post + at least 21 clear days before the meeting
   → Notice must include:
   (a) Proposed compromise/arrangement
   (b) Statement of material interest of DP
   (c) form of Proxy.

2. Access to Documents:- can request a free copy
   - provided within 48 hours

3. Chairman shall file affidavit confirming compliance with notice at least 7 days before the meeting

4. Proxy: must be signed & filed atleast 48 hrs before

5. Reporting Meeting Results by chairman:
   → Time fixed & If no time fixed → 7 days after meeting

6. Tribunal Petition for Confirmation:
   → If 3/4th of creditors in value (agree) → Liquidator/LLP must file a petition for confirmation within 7 days after chairman's report.
   → If LLP fails → any credito/partner may file

7. Tribunal Decision & Order binds all + file with Registrar within 30 days (FORM 22 + fee)

* ORDER NOT FILED → Fine upto 1 lakh.

⇒ Powers of TRIBUNAL (Sec 61)

- If compromise/ arrangement Sanctioned ↓ Supervise Implementation
- Give directions & Modifications
- Order winding up of LLP

⇒ Revival & Rehabilitation of LLP

↓

(I.) Can be proposed in following cases:

(1) Winding up petition pending

(2) Failure to pay Debt
(a) Creditors holding 50% or more demand &
(b) fails to pay within 30 days

(3) Liquidators files a report

(II) Who can apply?

(a) LLP, any creditor, any partner or (b) Liquidator

(III) APPLICATION

(1) Documents Required: statement of Account & Solvency
(b) Documents → Restructing / rescheduling of debts
→ Undertaking from bank + any other proof
(c) Proposed Scheme

(2) Timeline → within 90 days from Expire of notice or Tribunal Direction

(3) Tribunal proceeding → within 60 days; may admit or dismiss

(4) If applicat^n admitted → Tribunal may direct Meeting of creditors / Procedure of LLP Administrator / other

⇒ LLP Administrator

(i) Appointed from a panel maintained by CG.

(ii) Tribunal may remove and appoint replacement in case of death, incapacity

(iii) Submit preliminary report within 60 days.

(iv) Including decision of Creditor's meeting

creditors

3/4th of the outstanding
APPROVE
↓
(i) Sanction the agreement
(ii) Continue ~~of~~ OR Appoint LLP administrator
(iii) Approve modifications

3/4th of outstanding in value
DISAPPROVE
↓
Tribunal may:
(i) Order winding up
(ii) Continue liquidation
(iii) Approve an arrangement with modifications

TRIBUNAL'S ORDER

sanctioning the arrangement

(i) Defining powers and functions of LLP administrator
(ii) Time for completion
(iii) Directions to LLP, officers creditors etc.
(iv) any other

Role of LLP administrator
(i) complete implementation within 180 days
(ii) Submit final Report
(iii) File Certified Copy to Registrar within 30 days → FORM 22

⇒ Investigation → CG appoints Inspector :

On Order of a Court / Tribunal
↓
(a) Suo moto or atleast $1/5^{th}$ of total partner application

On its own authority
(a) If $1/5^{th}$ of total partner apply or
(b) LLP itself requests for investigation
↓
It finds circumstances
(i) fradulent, illegal, oppressive, unlawful,
(ii) Non compliance with Act
(iii) Reports indicate

⇒ Powers of Inspector

* Firm / Body Corporate / association → cannot be Inspector
* Powers → Require any entity to provide $info^n$
  → Examine on Oath any partner
  → Administer Oaths
* Seizure of Documents → Apply to Judicial Magistrate
  ↳ Enter + Search + Seize
* Report → Submit Interim & a final Report to Central Government
* Prosecution → If CG finds any person guilty may initiate prosecution
* Damages → may be recovered for fraud, misconduct
* Investigation expenses → Borne by CG → recovered by LLP as arrears of land revenue.
* Evidence → Report = Evidence

→ STRIKING OFF LLP NAME (Rule 37)

Suo Moto action by Registrar

↓

If inactive for 2 Years or more

↓

Notice is sent to LLP & its partners

↓

If LLP fails to Respond or Registrar is not convinced

↓

publish on MCA website

↓

Notice is published in official Gazette & LLP is considered dissolved.

Voluntary Strike off

↓

If LLP is inactive for 1 year or more

↓

All partners must consent

↓

can apply for strike off

↓

No notice required

Before Strike off Registrar ensure:

(i) Assets and liabilities are accounted.
(ii) provisions exists for recovering dues and clearing liabilities
(iii) Undertakings may be required from Designated partners/management

⇒ WINDING UP

(1) Voluntary Winding up

↓

passing SR with atleast 3/4th approval of total number of partners.

↓

If LLP has creditors → approval from them

↓

Copy of Resolution file with Registrar

↓

FORM 1 → within 30 days

↓

Starts from → Date of passing the resolution

(2) Winding up by Tribunal

↓

Discussed Later

→ Procedure of Solvency in Voluntary Winding up

1. Declaration by Designated partners
majority of DP (at least two) → declaration of Solvency

Declaration must confirm:
(i) LLP has no debt OR
(ii) LLP will be able to pay all its debts within a maximum of one year
↳ * verified by affidavit + filed in FORM 2

2. Filing with Registrar → declaration → FORM 3
→ within 15 days

3. Supporting Documents
(i) Statement of assets & liabilities (FORM 4)
↳ from date of last prepared to latest practicable date + attested by at least 2 DP
(ii) If valuation report from Valuer → attach.

⇒ Meeting of Creditors
(i) Convening → to seek approval for winding up
→ Notice by registered post, speed post etc.

(ii) Approval → $2/3^{rd}$ (in value) of creditors
→ after consent file application → within 14 days

(iii) Notice to Registrar → FORM-5 within 15 days

(iv) within 14 days → advertise → newspaper where its registered office is located.

→ LLP Liquidator in Voluntary Winding Up

(i) CG maintains a panel including:
Practicing CA, Advocates, Prac. CS, Prac. CMA
Firms or Body Corporates (professionals)

Appointment Process

LLP Liquidator

① LLP
→ must appoint
→ within 30 days of passing resolution
↓
Valid only if approved by 2/3rd in value of creditors

② Creditor
→ If disapprove appoint another liquidator
↓
Creditor choice final choice + fix remuneration

③ Tribunal
If no LLP liquidator
↓
Tribunal may appoint + fix remuneration

* Declaration of Independence

LLP Liquidator → declaration in FORM 6 stating
(i) any conflict of interest + (ii) lack of independence

* Duties of Liquidator

Rule 13: all powers of DP & other partners cease except for notifying the registrar

Rule 14:

(i) Settling the list of creditors → prima facie evidence
(ii) Obtaining necessary approvals
(iii) Maintaing proper records
(iv) Settling debts
(v) Ensuring due diligence

* Removal of LLP Liquidator

(i) By the Tribunal :
- → on cause being shown
- → new to be appointed
- → may be on application by Registrar
- → Give OOBH

(ii) By Partners / Creditors
- → If appointed → by partners → can remove
  - ↳ by creditors → they can
  - $\underbrace{\text{creditors → they}}_{\text{Give OOBH}}$

* Accounts of LLP liquidator must be audited. [Rule 15]

⇒ Supervision of Winding Up

(i) Appointment of Supervisory Committees
  ↳ assist LLP Liquidator

(ii) Reporting → must submit quarterly progress report
- → FORM NO 8. to partners or creditors
- → filed before end of the following quarter

(iii) Fraud discovered → against any non partner / DP
  → must inform partners / DP

* Tribunal Power → convert voluntary into compulsory winding up at any stage.

⇒ Finalisation of Winding Up & Dissolution

(i) fully wound up → LLP Liquidator → Final Report FORM 9
- ↳ how winding up process was conducted
- → Final winding up accounts
- → How LLP property was disposed
- → Proof of → debts & Liabilities discharged

⇒ Approval by partners or creditors
- → Final Report must be presented in a meeting
- → Approval → $2/3^{rd}$ of total no of partners or in value of creditors
  - ↳ pass a resolution within 30 days
- → Submit to Registrar & Tribunal
  - ↳ final winding up accounts, explanations and Report → to Registran FORM 10
  - → file an application → Tribunal for official dissolution order.

⇒ Tribunals order for Dissolution

After Review : (a) Pass an Order of Dissolution Within 60 days

(b) Submit order to Registrar → 30 days Form 11

publish notice in OG

↓

Dissolved

<u>Delay in Winding Up</u>

→ Not wound up in 1 year from the date of Voluntary winding up → Liquidator must file:
- (a) application before Tribunal → Reasons
- (b) Seek appropriate directions

⇒ Distribution of Property & Costs in LLP Winding UP

1. LLP Property → 1st: Satisfaction of all Liabilities
→ 2nd: Remaing → distributed to partners

2. Cost of Winding Up → paid out of LLP assets

Priority of Payments → 1. Secured Creditors
2. Workmen dues
3. LLP liquidator fee
4. other costs

WINDING UP → BY TRIBUNAL

1. Petition can be filed by:
(a) LLP or any of its partners
(b) Secured creditors
(c) Registrar
(d) Authorized persons
(e) Central Government

2. Inability to Pay Debts if: (Rule 25)
(a) Owes 1 lakh or more to creditors & fails to pay or secure it within 21 days of demand.
(b) A court order is unsatisfied
(c) Tribunal is satisfied that LLP is financially insolvent.

3. → Tribunal's Power

(a) Dismiss the petition
(b) Issue interim orders
(c) Direct Revival or Rehabilitation
(d) Appoint provisional Liquidator
(e) order Winding Up

→ If Petition is filed by someone other than LLP Tribunal may require:
→ LLP to submit → financial statement & objections

* Petitioner may need to deposit security.
⇒ If fails to submit → loose its right to oppose.

4. Appointment of Liquidator (Rule 29)
(a) Tribunal will appoint
(b) If not → official Liquidator

5. Winding Up Order (Rule 31)
If tribunal orders winding up must notify:
(a) Liquidator & Registrar within 15 days
(b) LLP's partners, DP, officers employees etc.

6. Tribunal's Jurisdiction (Rule 32)
(a) Any suit/claim involving LLP
(b) Applications u/s 60-62
(c) Questions on priorities, law or fact in winding up.

7. Liquidator's Report → submit within 60 days
covering → Assets + O/s contributions + Existing or contingent liabilities + Legal Cases + LLP viability + contracts + Joint Ventures

* After receiving Liquidator's Report Tribunal may:

- Fix Time Limit → for completion of winding up
  - If not economical → May reduce time
  - If needs more time → extension upto 30 days
- Sale of LLP → full or partial Sale → may appoint Sale Committee
- Revival or Rehabilitation of LLP
- Investigation in case of fraud → If Report reveals fraud → Order Investigation & issue appropriate orders

* If winding up is ordered or a provisional Liquidator is appointed:
  (a) Liquidator must take custody & Control of all assets, property etc.
  (b) take necessary step to protect & preserve properties

* Obligation on third parties
  (a) Pay, deliver, surrender or transfer LLP's money, property, books & papers to the Liquidator
  (b) must be done within time specified by Tribunal.

⇒ Application of LLP's Assets

* First: Winding Up Costs
* Then: Settling liabilities

→ Committee of Inspection
* Tribunal may appoint Committee of Inspection
* It can have upto 12 members only.
* Meeting → as needed & must report outcomes to Tribunal

→ Periodical Reports
* Liquidator must report & submit Quarterly Reports → FORM 13.

⇒ Assistance → can hire professionals
CA, CS, CMA, Legal experts, Valuers other

⇒ Appeal against Liquidator's Decision
* To Tribunal
* Tribunal may confirm, reverse or Modify the decision

⇒ Books of Accounts (Rule 44)
* Liquidator shall maintain proper Books of Accounts
* Must be Audited as per Rule 56.
* copies of finacial statements must be sent to all Creditors & partners.

→ Provisions applicable to Every Mode of Winding up

1. Power of Liquidator

- Voluntary Winding up → approval of 3/4th partner
- By Tribunal Order → approval of tribunal

(a) Pay any class of creditors
(b) Make compromise or arrangement
(c) Settle outstanding contributions

2. Proof against LLP ⇒ debts [certain, contingent, present or future]

3. Books & Records = prima facie evidence of truth

4. Inspection of books of Accounts ⇒ any creditor or partner may inspect

5. Disposal of Records →

- Voluntary winding up → as decided by 3/4th of partners with secured creditor's approval
- Tribunal ordered winding up → Tribunal decides how to dispose.

6. Remittance of Money (Rule 57)

→ Deposit all funds in → Public Account of India
→ Scheduled Bank (if permitted by tribunal)

* No deposit in private accounts.
* No retention → more than 50000 over 10 days without approval

* Must file required reports, accounts & documents within prescribed time

→ Dissolution Void

Within 2 years of dissolution } Tribunal can declare it void } If application by:
(a) Liquidator
(b) any interested party

ORDER to be filed with Registrar
FORM-11 within 30 days

* Computing Limitation Period

→ Period from the commencement of winding up to one year after the winding up order is excluded

* Filing with Registrar
→ Submitted electronically + prescribed fees
Fee waiver:
→ CG may waive fees for Tribunal Ordered winding up
→ If LLP has no funds, provided liquidator submits a certificate confirming it.

→ General Procedures for Winding up

(i) All proceedings are initiated before the designated Tribunal Bench &
all documents should be neatly written, printed on foolscap-size paper in duplicate

(ii) Hearings, advertisements → Form 16

(iii) Tribunal power → may issue necessary orders
→ prevent misuse of tribunal process

(iv) Time Calculations → time period excludes first day & includes last day
→ If last day = Tribunal holiday then, next working day

(v) Registers to maintain physical / digital
(i) LLP Petitioners
(ii) LLP applications
(iii) Liquidation Register
(iv) LLP Document Register
(v) Records of appearances before Tribunal

(vi) Every petition → gets a distinct Serial No.
→ verified by affidavit form 18

(vii) Advertisements → must be published at least 7 days before the ~~meeting~~ hearing
One English + One regional newspaper

(viii) Petitions must be served:
- on the respondent
- at least 7 days before the hearing

(ix) No notice required for Adjourned hearing

(x) Adjournment allowed only for valid reasons (serious Illness + other unavoidable)

(xi) Costs are imposed on party seeking adjournment. except in special cases.

⇒ Inspection & Copies of Proceedings

Inspection of Tribunal Records

Parties involved in the case or thier authorised representatives
- Submit written application
- Pay prescribed fees

Third Parties
- Cannot inspect books unless
  - obtained consent from the party
  - special permission from Tribunal

* Copies of Order: any person can obtain a copy.

Procedure for winding up

(i) Filing the petitions → filed in duplicate

(ii) Tribunal proceedings
- → petition admission & fixing hearing
- → copies for creditors / partners → available in 24 hrs on payment
- → petition cannot be withdrawn without tribunal approval
- → can replace original petitioner with creditor / partner

(iii) Filing & Serving Affidavits
- → Opposition affidavit → filed at least 5 days before the hearing
- → Reply affidavit → at least 2 days before the hearing

(iv) Appointment of LLP Liquidator
- → Tribunal may appoint provisionally before final order

(v) Tribunal's order
- → ORDER → Form No. 33
- → Order notice to liquidator → form 31 or 32

(vi) Advertisement → within 14 days → form 34

(vii) Filing of Stay Order → if granted, the applicant must file a certified copy in Form 10 within 15 days

(viii) Liquidator Responsibilities

(i) Notice for statement of affairs form 35
(ii) Submissions in form 37 + duplicate + affidavit
(iii) Affidavit of concurrence → Form 38
(iv) Verification & Submission to Tribunal
(v) Liquidator Report → form 40

⇒ Meeting of CREDITORS / PARTNERS in winding up

Issue 14 day notice + advertise
↓
Select time & venue
↓
* Any officer fails to attend → report to Tribunal (Form 56)
↓
Chairman → Voluntary wind up → meeting appoints by resolution
→ If summoned by Liquidator } they or their nominee = chairman
↓
Resolution pass : If majority (creditors in value or partners approve)
↓
Resolution file with Tribunal
↓
Adjournment → may adjour
Quorum → creditor meeting → atleast 2
Partner meeting → atleast 2
No Quorum → Adjourn to same day Next Week or another date within 7 to 14 days
↓
Chairman report → within 7 days

⇒ Compromise & Sale of Assets

(i) Liquidator needs Tribunal approval before settling LLP claims against others.

(ii) Sale of LLP property
- Cannot be sold w/o approval
- Sale must be confirmed within 60 days
- via public auction, sealed tenders or as per Tribunal's direction
- Auctioneer payment → reimbursed as per Tribunal's approval

⇒ Distribution to Creditors & Partners

(i) No payment without Tribunal Sanction.

(ii) Declaration:
- → must notify creditors atleast One month before distribution
- → payments can be assigned to another person
- → Payments are made via registered post, cheques or demand drafts within 45 days of creditor list filing

(iii) Final Returns to partner
- ↳ Tribunal approval needed & Submission of detailed list
- → Partners are notified by post

(iv) Deceased Creditor → If claim less than 500 → apply for sanction w/o Succession certificate.

→ Final Steps of Dissolution

* Liquidator files final Accounts & Applies for LLP Dissolution } Tribunal reviews
↓
Orders dissolution

* Unclaimed funds = LLP's Liquidation Account
* Copy of dissolution order → sent to Registrar

* Winding up is concluded when

- Tribunal Ordered
  ↓
  When dissolution order is reported to registrar
- Voluntary Wind up
  ↓
  When dissolution is declared, unless assets remain unclaimed

* Declare dissolution Void → apply + notice to CG & Registrar

  certified copy file with Registrar → 30 days

* Appeals can be filed in National Company Law Tribunal within 45 days