

Limited Liability Partnership Act

Introduction:-

LLP Act 2008 is applicable to whole of India.

LLP Act was assented 7th Jan. notified thereafter in O.G.

81 sections & 4 Schedule. Sec (81) → omitted.

First Schedule

Mutual rights & duties of partner & LLP in absence of agreement.

Second Schedule

Conversion of firm into LLP

Third Schedule

Conversion of Pvt. co to LLP

Fourth Schedule

Conversion of unlisted Public co to LLP.

Features of LLP

Liability of partner will be limited to the extent of capital contribution

New form of legal business entity with limited liability

Alternative Corporate Business Vehicle

Allow the partners the flexibility of organising their structure

LLP itself will be liable for the full extent of its assets.

Some Important Definitions:-

Body Corporate Sec 2(1)(d)

means

A company as defined under Companies Act 2013 & includes

Does not include

- corporation sole
- co-operative society
- any other B.C

LLP foreign LLP foreign Co.

notified by C.A.

Financial Year sec 2(1)(L)

If LLP incorporated after 30th September
↓
31st March of next following that year.

Others
↓
1st April to 31st March of the following year.

Small LLP Sec 2(1)(ta)

Contribution
↓
not exceed 25 lacs
[subject to such higher amt as may be prescribed but not exceeding 5 crores].

AND

Turnover
as per Statement of A/c's & Solvency in the immediately preceding FY does not exceed 40 lacs or such higher amt. not exceeding 50 cr. super as may be prescribed.

or which meets such other requirements & conditions as may be prescribed.

Applicability of Companies Act 2013:-

words & expressions used & not defined in the LLP Act

↓
Then Companies Act definition will apply.

Note:- Partnership Act 1932 does not apply to LLP.

2(1)(a) address means address in relation to Partner of LLP

Individual (Partner) residential address

B.C (Partner) registered office address of B.C.

#

Characteristics of LLP

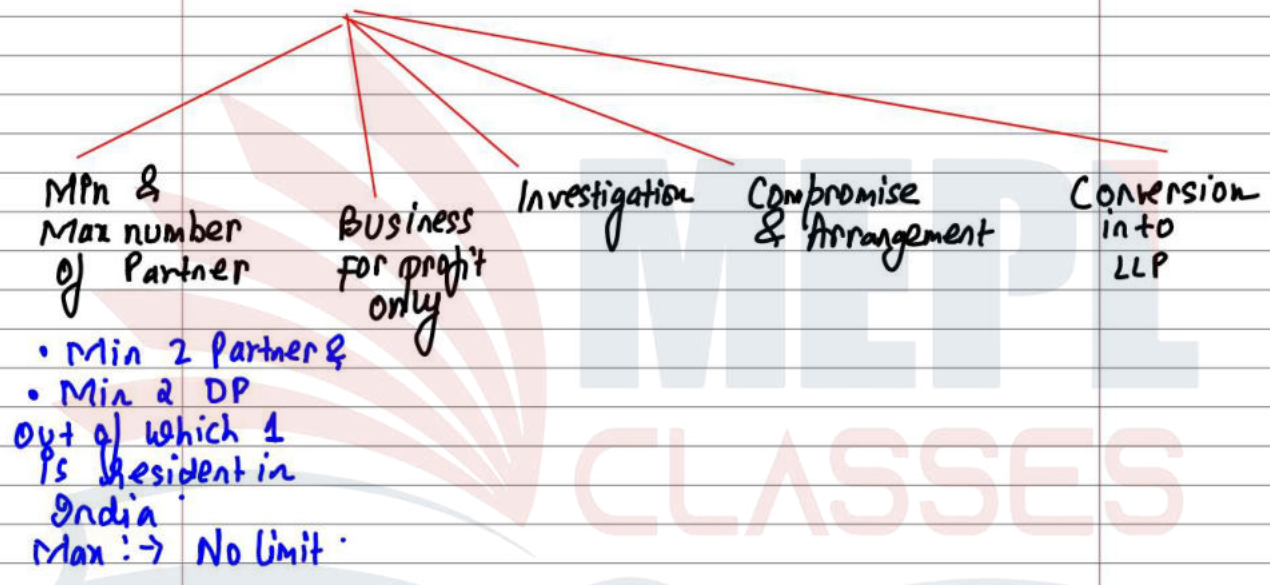
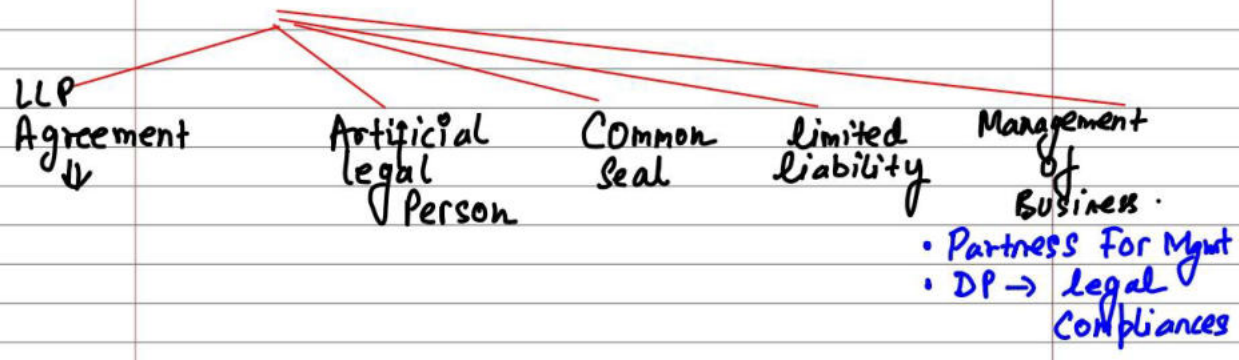
Body Corporate

Perpetual succession

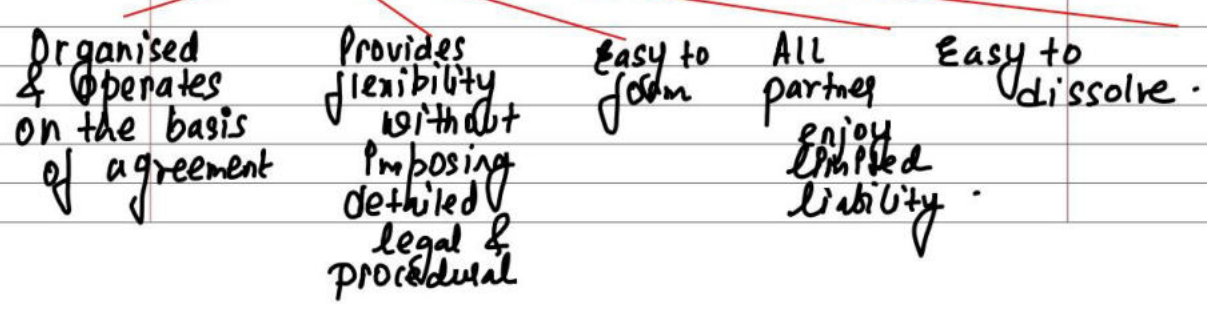
Separate legal

Mutual Agency

Entity



Advantages of LLP



Requirement

Partner (sec 5).

Any Individual or Body Corporate.

An Individual shall not be a partner of LLP if

he is of unsound mind

on-discharged insolvent

Applied for insolvency & application is pending.

following person can become Partners in LLP.

Individual incl. (NRI & OCI & foreign National)

LLP

Companies (incl. foreign Companies)

Foreign LLPs

LLP incorporated outside India

Foreign Companies

Note:- Corporation Sole & Co-operative Society cannot become partners.

PDI making investment in LLP (NRI & OCI)

Non Repatriation Basis

↓
Since not an FDI
↓
Only LLP Act apply.

On Repatriation Basis

↓
FDI compliances i.e. FEMA, 1999 (+)
LLP Act.

Sec 6:~ Minimum No. of partners:-

Min 2 partner

Any time reduced below 2

↓
 If business carried on for more than six months then the only partner who carries out the business after that shall be personally liable for business of LLP.

Sec 7. Designated Partner:-

Minimum 2 Designated Partner

Who is Individual

Atleast one should be resident in India.

Note:~ If partner is body corporate then nominated individual shall be designated partner.

Conditions for DP (Sec 7).

↓
 Incorporation Document & LLP Agreement
7(5)

↓
 Consent in form 9
7(3)

↓
 File with ROC
 particulars of individual who gave consent in 30 days of appointment
7(4)

↓
 DP shall obtain Designated Partner Identification Number (DPIN) from CAY
7(6)

7(5) Every LLP & DP shall satisfy such other conditions as may be

Sec 153 to Sec 159 apply to

Prescribed :

DP [7(6)]:

Liabilities of Designated Partner (Sec 8):-

Responsible for doing all acts, matters & things as required to be done by the LLP in respect of compliance of provision of the Act (Such as filing of documents, return, statement etc).

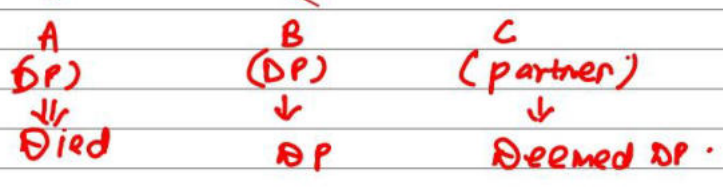
liable for all penalties imposed on LLP for any contravention of Act.

Changes of DP (Sec-9).

Within 30 days of vacancy sec 7(4) & 7(5) shall apply.

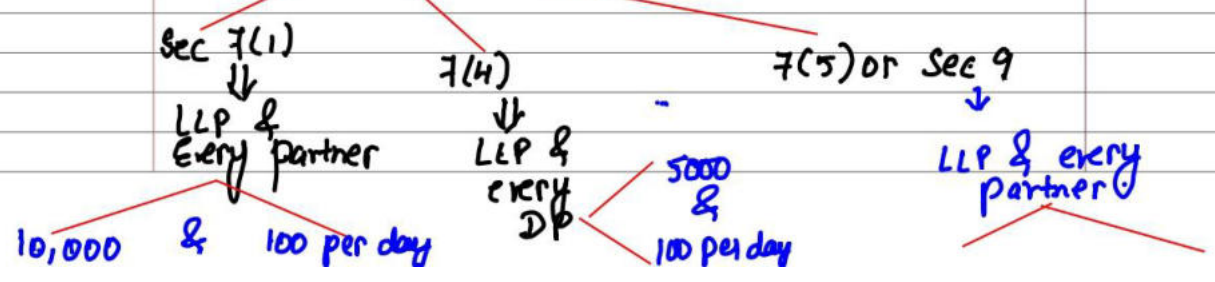
If no DP is appointed then each partner shall be deemed to be designated Partner.

ABC LLP



Sec 10:->

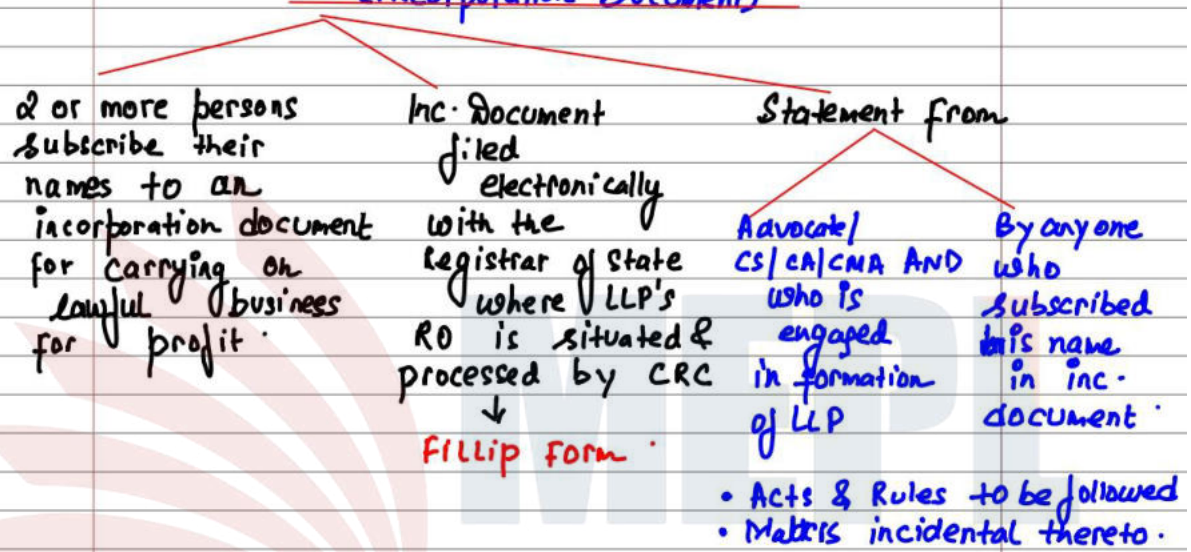
Punishment for Contravention of Sec 7 & Sec 9.



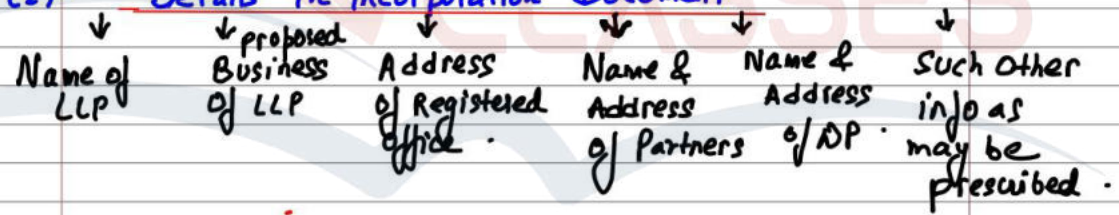
Max 1 lac → LLP
 Max 50,000 - partner
 Max - 50,000 (LLP)
 Max - 25,000 (Partner)
 10,000
 100 per day
 1,00,000 → Max (LLP)
 50,000 → Max (partner)

Incorporation of LLP

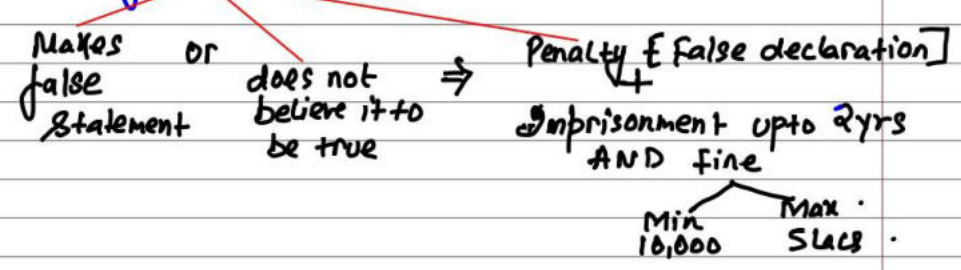
Sec 11 - (Incorporation Document)



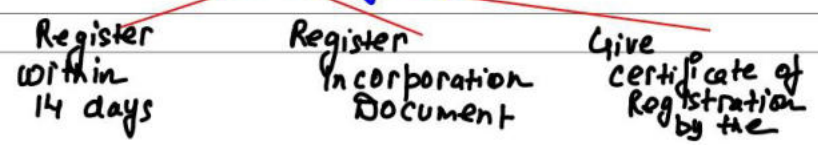
(2) Details in Incorporation Document



(3) Advocate/CA/CS/CMA/ Person

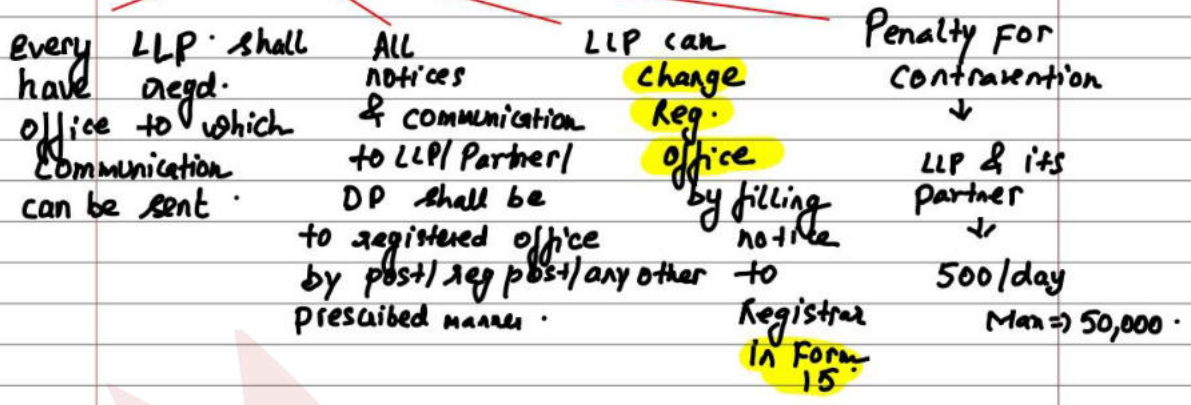


Incorporation by Registration (Sec 12).

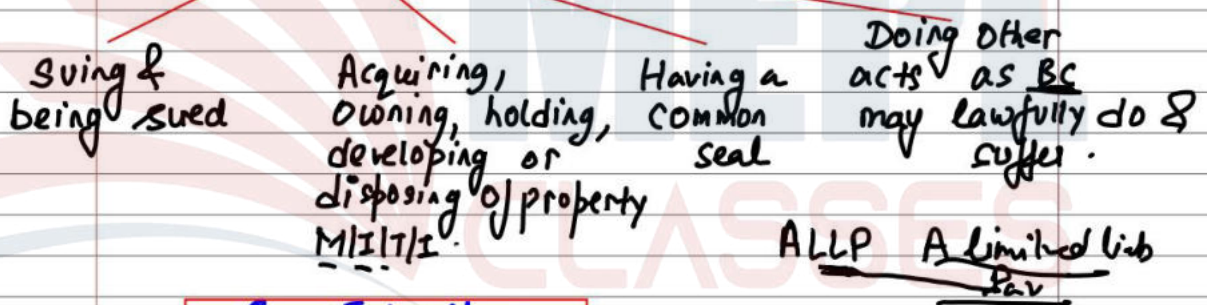


- certificate shall be signed by The Registrar & authenticated by his official seal. name of LLP.
- cert → conclusive evidence of LLP's existence.

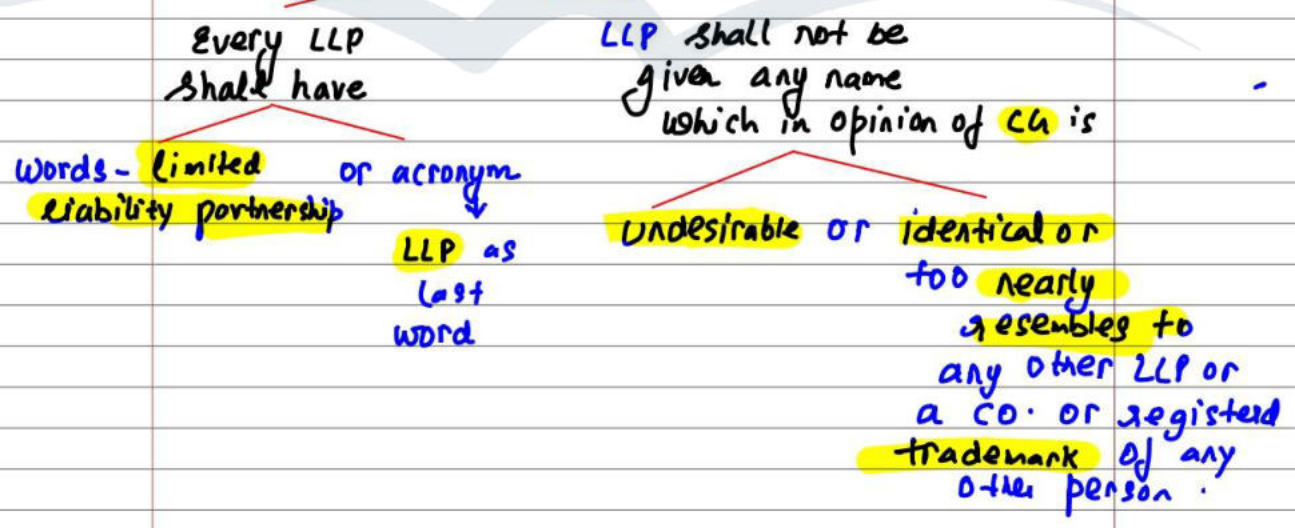
Sec 13 Registered office of LLP & change therein.



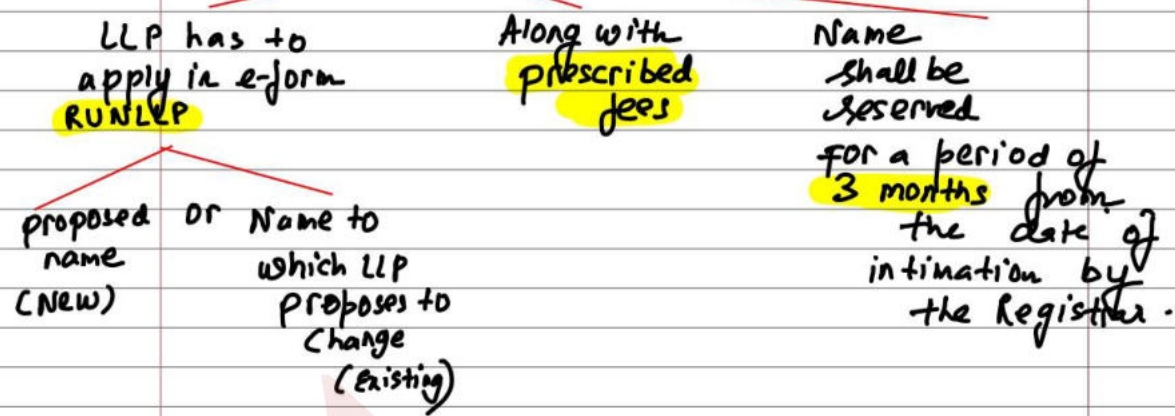
Sec 14: → Effect of Registration:-



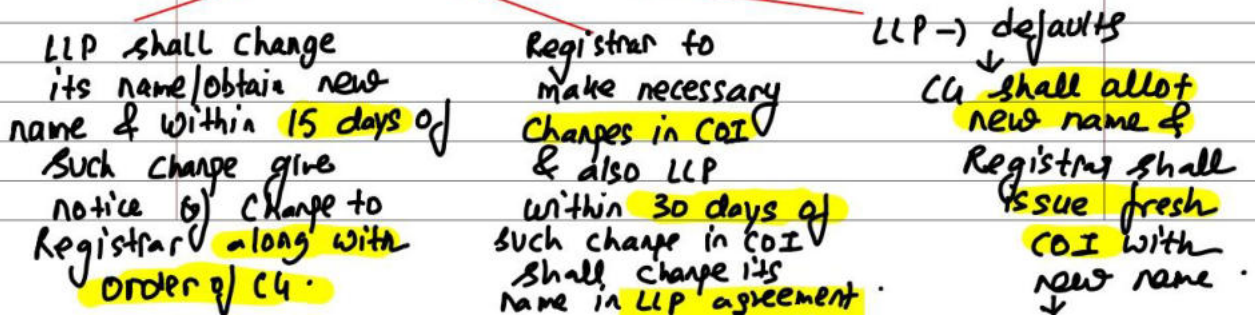
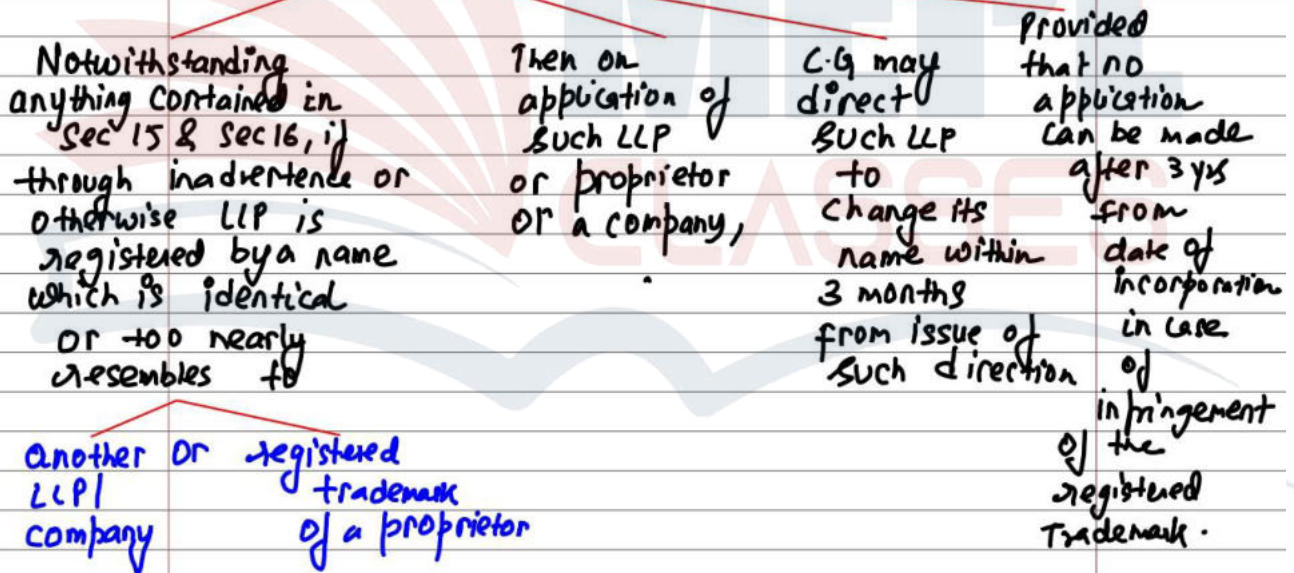
Sec 15 → Name.



Sec 16:-> Reservation Of Name .



Rectification of name of LLP (Section 17) .



Provided that nothing contained here shall prevent LLP from subsequently changing its name.

STEPS TO INCORPORATE LLP.

Step 1:-> Reservation of name of LLP (RUNLLP).

Step 2:-> Incorporating new LLP (Fillip).

Step 3:-> Execution of LLP Agreement

↓
mandatory as per Sec 23. -> Filer in (e form-3) within 30 days of inc. of LLP.

Sec 22:- Eligibility to be partners

Subscribers to the incorporation document shall be partners

AND

Any other person in accordance with the LLP agreement.

Sec 23 Relationship of Partners:-

(1) Mutual rights & duties of Partners of LLP & of LLP & its partners are governed by LLP agreement.

(2) Any changes in LLP agreement to be filed with the Registrar along with prescribed fees & manner.

(3) An agreement in writing made before inc. may impose obligations on LLP
↓
Later on can be satisfied by all the partners after inc. of LLP.

(4) If no agreement
↓
Provisions of first schedule to apply.

Sec 24: -> Cessation of Partnership Interest:-

If there is agreement

Then as per agreement with other partner [LLP agreement]

If no agreement

By giving notice to other partner of his intention to resign as partner.

(Not less than 30 days notice)

A person shall cease to be partner

- On Death/ Dissolution
- Declared Unsound Mind
- Declared as insolvent or applied for insolvency.

Effect of Cessation:-

The former partner shall be regarded as partner unless

the person or has notice that former partner has ceased to be a partner of LLP

notice of cessation has been delivered to Registrar. e-form-4.

Unless otherwise provided in the LLP Agreement.

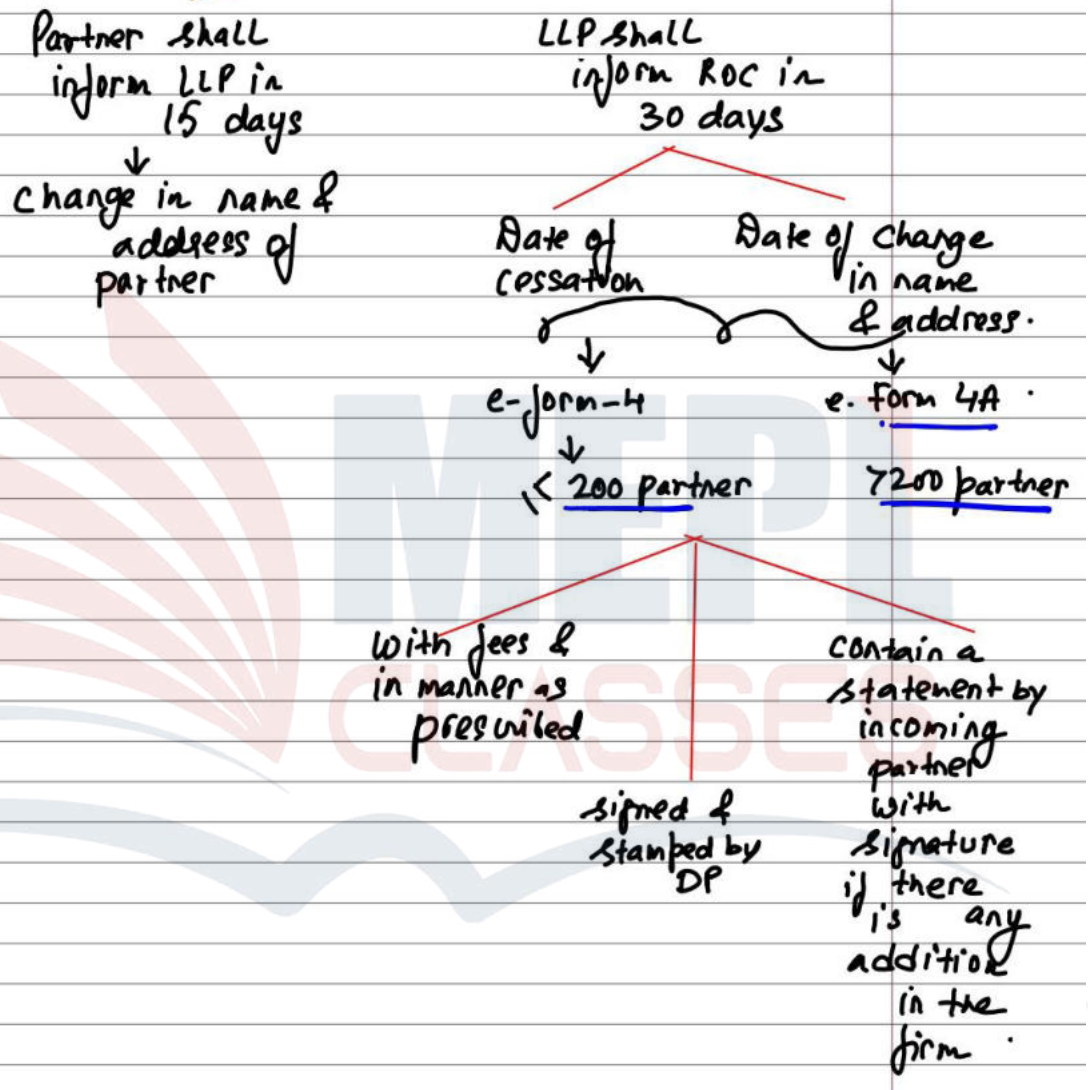
The former partner or his legal heir/ representative in case of Death/ Insolvency

shall be entitled to his share

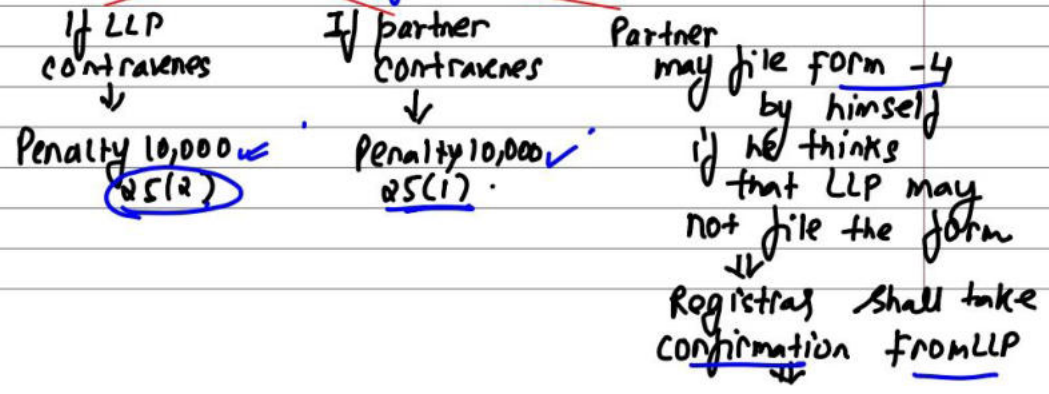
An amount equal to capital contribution of the former partner AND his right to share in accumulated profit of the LLP after deduction of

any loss on the date of cessation.

Sec 25: -> Registration of Changes in Partner: -



Contravention of sec-25:



If no confirmation in 15 days
↓
Registrar shall register the change of such cessation.

Extent & Limitation & Liability of LLP & Partner

Sec 26
↓
Every partner is agent of LLP & not other partner

27(1)
↓
LLP shall not be bound by any act of the partner

Partner has no authority

Person has no authority or if he believes he is partner but he is not

27(2)
LLP shall be liable if partner is liable to any person as a result of omission/wrongful act in the case of business of LLP.

27(3)
Obligation of LLP arising out of contract is solely the obligation of LLP.

Note:- Liability of LLP shall be met out of estate/property of LLP 27(4).

Extent of liability of partner Sec 28.

A partner is not personally liable

However he will be liable for his own wrongful act or omission but not for any other partner of LLP.

Ans LLP

Sec 29 :- Holding Out:-

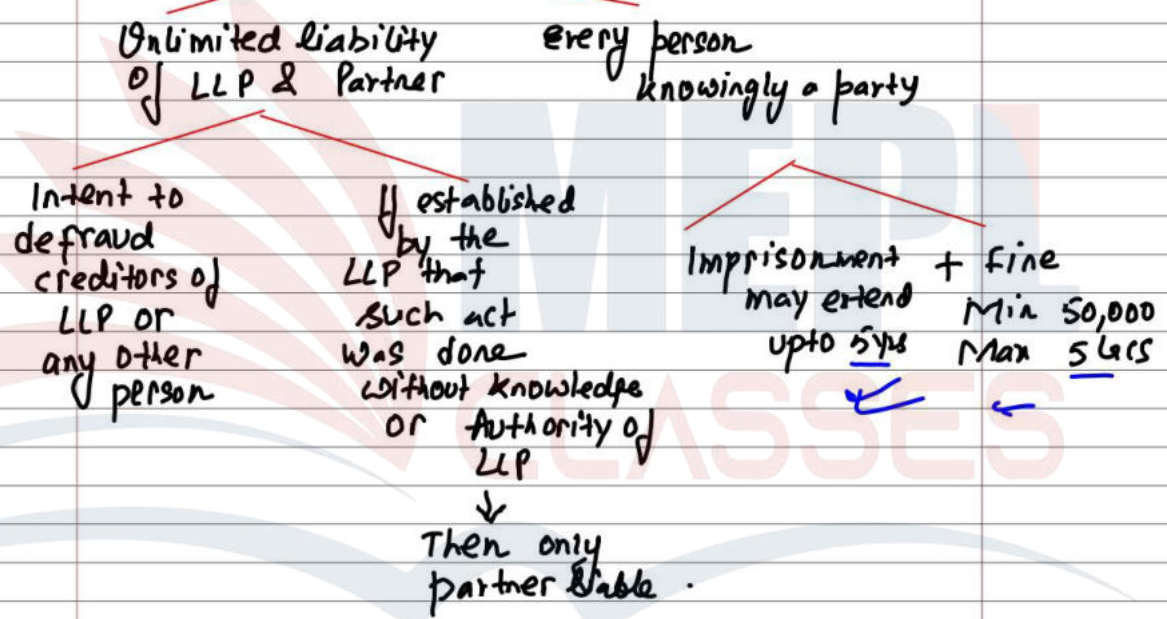
Any person who by words spoken or written or by conduct represents himself or permits himself to be represented as a partner in LLP he shall be liable to any person who on such

mis-representation gives credit to LLP whether the person representing himself knows or does not know whether rep. has reached the person so giving credit.

However, credit is received by LLP, LLP shall be liable to the extent of credit received by it.

Q7) On partner's death if LLP continues using the name of the deceased partner's name shall not make his legal rep or his estate liable for act done after his death.

Sec 30. V. 2nd



Note:- DPL Partner/LLP shall compensate for the loss/compensation to person who has suffered such loss or damage
 However if LLP has no knowledge or authority
 Then LLP not liable.

Sec 31:- Whistle Blowing:-

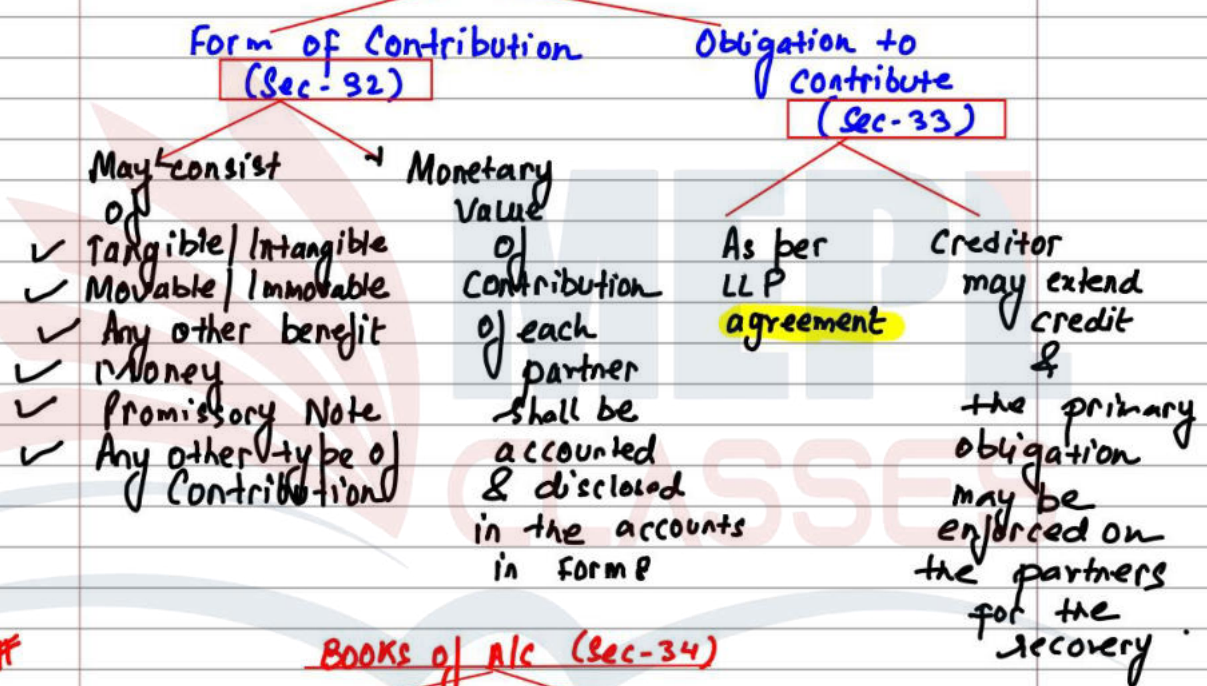
The court or tribunal may waive off or reduce the penalty of any
 Also the person who has assisted in investigation shall not

Employee or partner of LLP if such a partner has provided certain information during the investigation as a result of which some other partner/ee/DP of the LLP is convicted under this Act or under any other Act.

be harassed, demoted, or be discriminated against in such LLP.

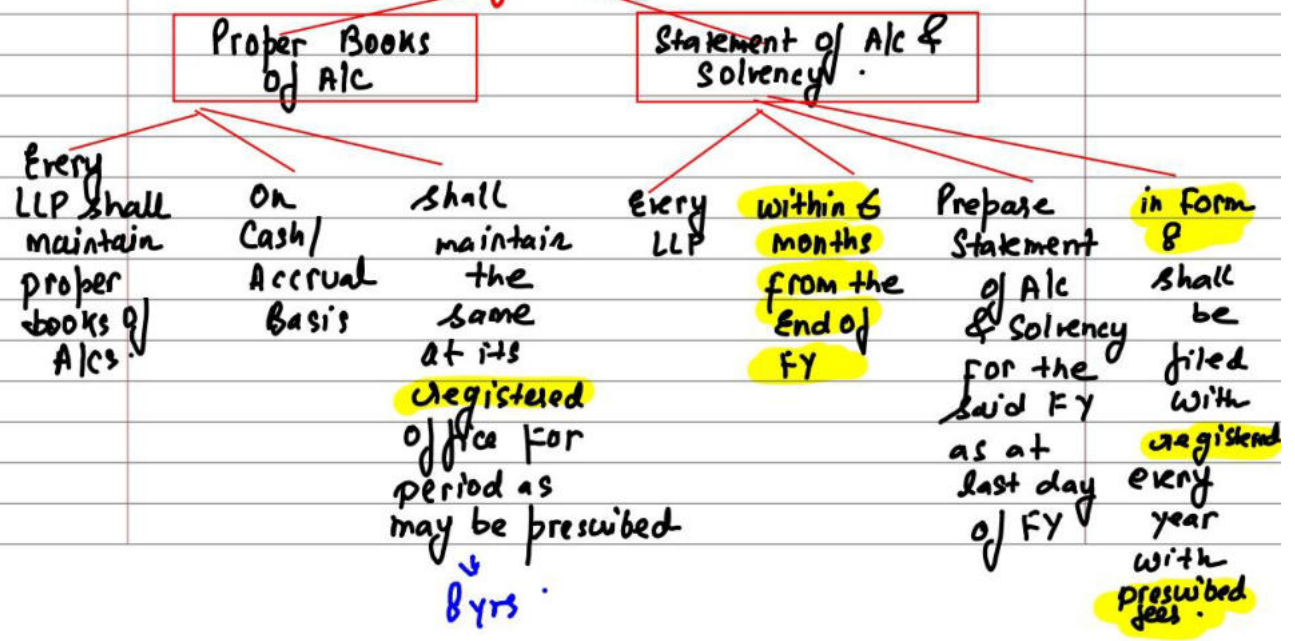
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Contribution:-



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BOOKS of A/c (Sec-34)



Audit by C4

Books of A/c shall be audited

C4 may exempt by notification in O4 certain class of LLP.

If e-form 8 not filed

LLP
↓
₹ 100 per day
Max 1 lakhs.

Every OP
↓
₹ 100/day
Max 50,000

If BOA/ Statement of A/c and solvency/ Audit not conducted

LLP
Min :- 25000
Max :- 5 lacs

Every OP
Min :- 10,000
Max :- 1 lac.

Sec 34A → A/c & Auditing Standard

C4 in consultation with NFRA
U/s 132 of Companies Act, 2013

Prescribe the following:

- Standards on Accounting
- Standard on Auditing as recommended by ICAI.

Sec 35 - Annual Return :-

Every LLP file Annual Return with Registrar

Within 60 days of closure of its FY.

in Form-11.

Penalty for non-filing:-

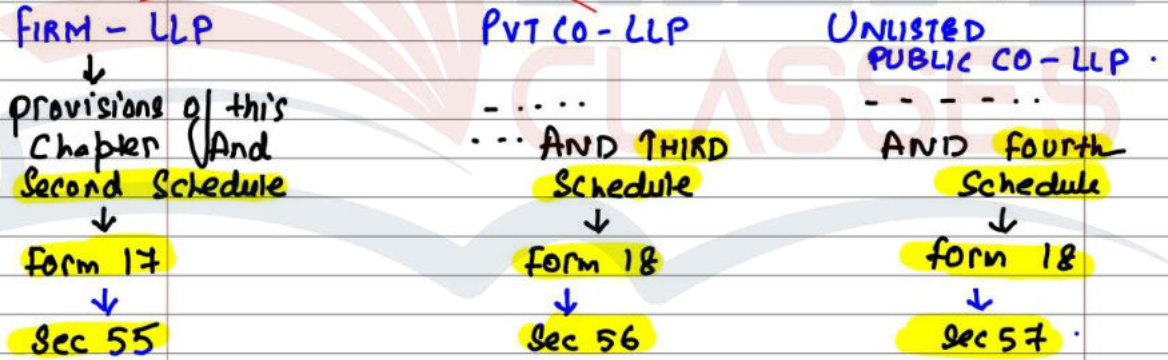


Note:- Documents filed by LLP can be inspected by any person on payment of fees (sec 36)

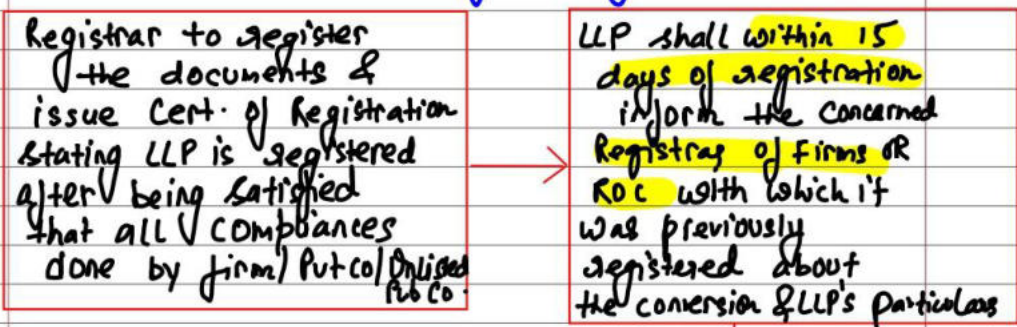
Note:- If any person gives false information or omits any material facts then such person shall be punishable

Imprisonment upto 2 years + fine
Min 5lacs
Max 5lacs

CONVERSION INTO LLP



Sec 58 (Effects of conversion)



① Upon such conversion on & from

③ Upon such conversion the shareholders of Pvt/

the date of Cert. of Reg, the effects of conversion shall be such as specified.

Unlisted public co, partners of firm & partners of LLP shall be bound by the respective Schedules.

Effects of Reg:-

Notwithstanding anything contained in any other law, from the date of registration there shall be a LLP registered under this Act.

All properties tangible/Intangible/ Movable/Immovable/ Assets/ Interest/ Rights/ privileges/ obligations relating to firm/co -> shall be transferred to & vested in the LLP without further assurance, act or deed.

The firm/co. shall be deemed to be dissolved & removed from the records of the RoF/RoC as the case may be.

Sec 59: -> Cg may make rules for provisions in relation to establishment of place of business by foreign LLP within India.

Winding Up & Dissolution:- Sec 63:-

may be either voluntary or by Tribunal & after being wound up it gets dissolved.

Circumstances in which LLP may be wound up by Tribunal:-

- If LLP decides that LLP be wound up by the Tribunal
- If for more than 6 months, no. of partners in LLP is reduced below 2.
- If LLP acted against the interests of the sovereignty & integrity of India.
- If LLP has made a default in filing with the Registrar the Statement of A/c & Solvency or Ann. Return for any 5 consecutive fy.
- On just & equitable grounds in opinion of Tribunal.

C4 to prescribe rules in relation to winding up -

sec 66:- Business Transactions of Partner with LLP -> A partner may lend money to & transact other business with the LLP & has the same rights & obligations with respect to such transaction as to a person who is not a partner.

sec 67:- Application of the Provisions of the Companies Act:-

C4 may by notification in O4 direct to apply any of the provisions of the Companies Act on LLP or apply with exception, modification.

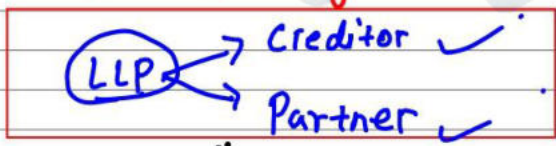
Draft copy of notification to be laid before each House of Parliament for total period of 30 days & if dis-approved, notification shall not be issued.

sec 69:- Additional fees may be prescribed in addition to any fees as is payable for filing of such document or return.

sec 70:- Enhanced Punishment:-

twice the amt. of fine for such offence.

Compromise/Arrangement or Reconstruction. sec 60.



Compromise/Arrangement

LLP
Creditor
Partner
Liquidation (In case of winding up).

Apply

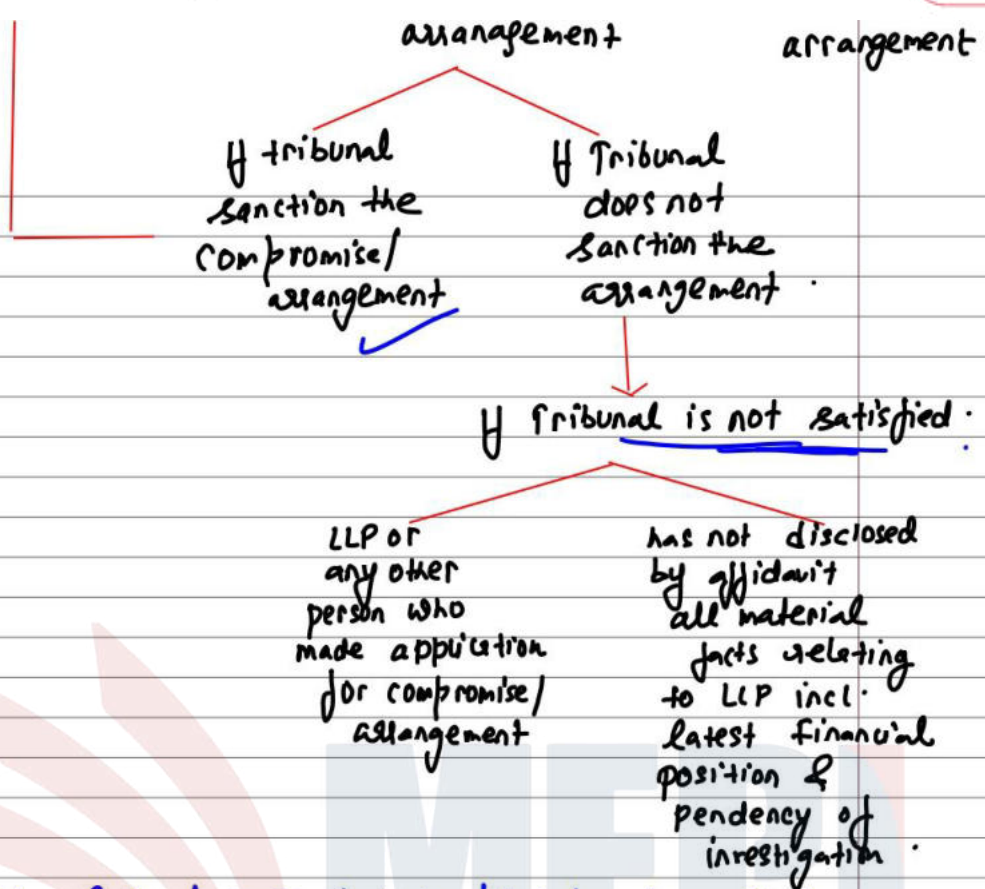
Tribunal

Order meeting of creditor or Partner

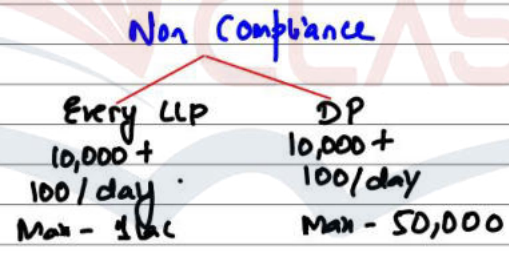
Binding.

If 3/4 agree to compromise/

If 3/4 does not agree to compromise/



Note:- Tribunal order shall be filed in eform 22 by LLP within 30 days of the order shall have effect only after filing.



Note:- Tribunal has the power to stay the suit pending against LLP.

Note:- Tribunal has the power to supervise the carrying out of the compromise/ arrangement & can also give order in relation to such arrangement

Note:- If Tribunal is satisfied that such compromise/ arrangement not workable then it
 On its own or on application by any person.
 order for winding up

of LLP u/s 64.

Reconstruction Or Amalgamation of LLP:-

Partner → LLP → Creditor
 ↓
 Application u/s 60
 ↓
 for purpose of reconstruction / amalgamation of 2 or more LLPs.



will sanction after making provisions for following:-

- Transfer of whole or part of undertaking, property or liability
- Continuation of any legal proceedings between transferor & transferee
- Dissolution without winding up of Transferor LLP (i.e. LLP1).
- Provision to be made by Tribunal regarding any dissent by any person
- Such other matter incidental to the arrangement.

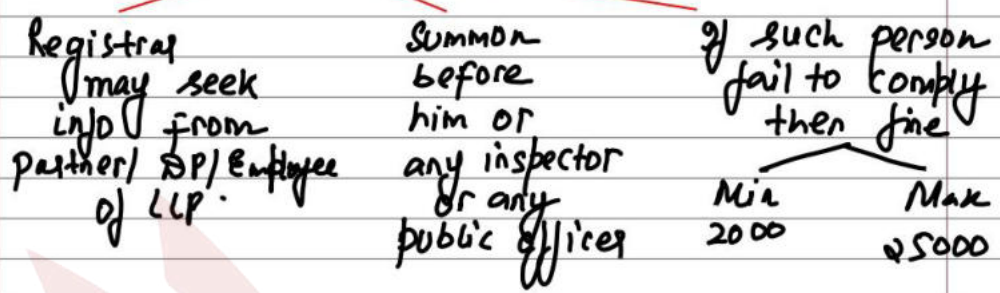
Note:- Tribunal shall not pass order for amalgamation of 1 LLP that is being wound up with other LLP
 ↓ unless
 Report from registrar that the affairs of LLP are conducted not prejudicial to int. of partner or public.

- Note:- No order for dissolution by Tribunal
- ① official liquidator has done scrutiny of books & papers of LLP
 - ② official liquidator has made a report that affairs not managed

against the int. of partner or public.
Note:- Certified copy of order to be submitted to Registrar within 30 days of the order.

Penalty same as sec 60

Power of registrar to obtain info (sec-38)



Assignment & Transfer of Partnership Rights

