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## Chapter XII

# The Limited Liability Partnership Act, 2008

## 1. INTRODUCTION



The Ministry of Law and Justice on

9th January 2009 (misprinted in the module as 2007) notified

The Limited Liability Partnership Act, 2008

- **2008** - Bill was passed by the Parliament on 12th December, 2008 and
- **2009** - The President of India has assented to the Bill on 7th January, 2009
- **2021** - Amended- The LLP (Amendment) Act, 2021 (31st August, 2021)
- This Act is for formation and regulation of LLPs and matters connected therewith or incidental thereto.
- The LLP Act, 2008 has **81 sections and 4 schedules**.
  - The First Schedule =
    - Mutual rights and duties of partners and
    - Between limited liability partnership and its partners where there is absence of formal agreement with respect to them.
  - The Second Schedule - Conversion of a Firm into LLP.
  - The Third Schedule - Conversion of a Private company into LLP.
  - The Fourth Schedule - Conversion of an Unlisted public company into LLP.
  - Administration of the Act -

**The Ministry of Corporate Affairs (MCA) + the Registrar of Companies (ROC)**

The Companies Act, 2013 → **Registrar of Companies**

The Indian Partnership Act, 1932 → **Registrar of Firms**

The Limited Liability Partnership Act, 2008 → **Registrar of Companies**

**Note:**

- **Framing of the rules, amendments in Official Gazette with regards to the Act will be done by the Central Government.**
- **Section 4 - Non-applicability of the Indian Partnership Act, 1932**  
**Save as otherwise provided, the provisions of the Indian Partnership Act, 1932 shall not apply to a LLP..**
- **Applicability of the Companies Act, 2013:**  
**Words and expressions used and not defined in this Act but defined in the Companies Act, 2013 shall have the meanings respectively assigned to them in that Act. [Section 2(2)]**

## NEED OF NEW FORM OF LIMITED LIABILITY PARTNERSHIP

- A need has been felt for a new corporate form that would provide -
  - an alternative to the traditional partnership with unlimited personal liability on the one hand and
  - the statute-based governance structure of the limited liability company on the other hand.
- Owing to flexibility in its structure and operation -
- The LLP is a suitable vehicle for **small enterprises and for investment by venture capital.**

## 2. MEANING AND CONCEPT

- A LLP is a **new form of legal business entity**
- **with limited liability.**
- It is an **alternative corporate business** vehicle that not only
- gives the **benefits of limited liability** at **low compliance** cost but
- allows its **partners** the **flexibility** of organising their **internal structure** as a traditional partnership.
- The LLP is a **separate legal entity** and,

- while the LLP itself will be liable for the full extent of its assets,
- the liability of the partners will be limited.
- It gives benefits of limited liability of a company and the flexibility of a partnership.
- Since LLP contains elements of both 'a corporate structure' as well as 'a partnership firm structure' LLP is called a hybrid between a company and a partnership.

New form → Alternative Corporate business Vehicle → LLP is a HYBRID system

#### Benefit of Company

- Body Corporate
- Limited Liability
- Perpetual Succession
- Separate Legal Entity
- Artificial Legal person

#### Benefits of Partnership Firm

- Flexibility
- Agreement
- Easy to create
- Easy to dissolve
- Compliances are less

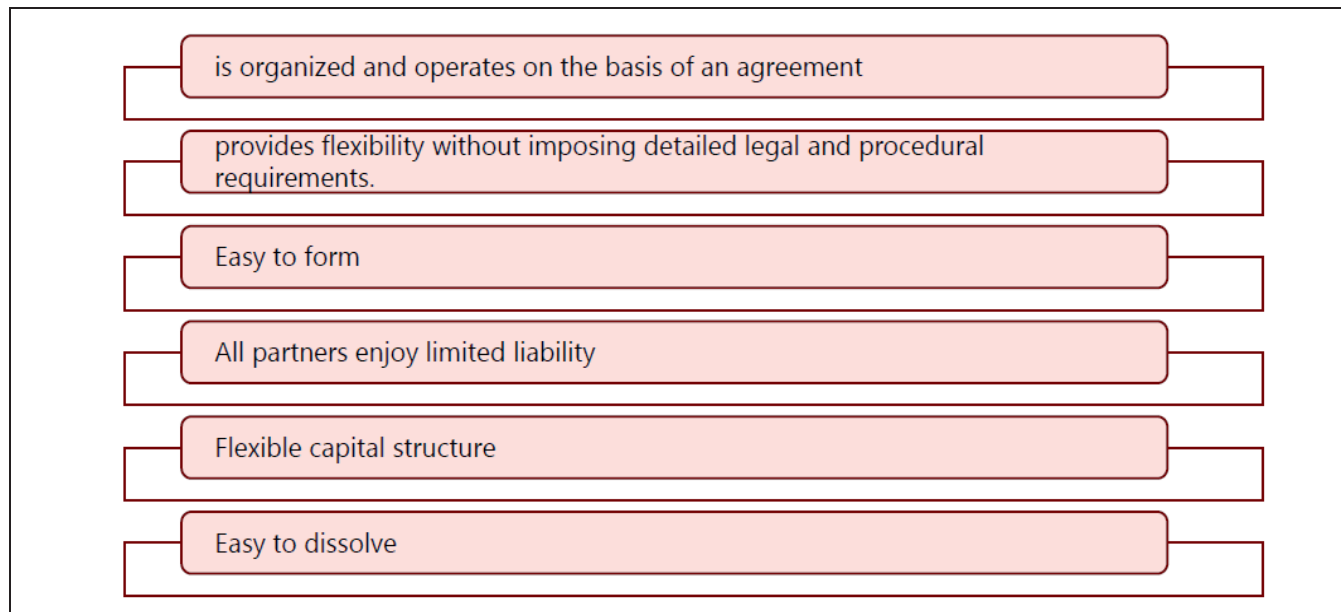
**LLP has taken advantages of both the form of organisation**

### ADVANTAGES OF LLP FORM

LLP form is a form of business model which:

#### AF-Easy-LL-Low

1. Agreement
2. Flexibility
3. Easy to form
4. Easy to Dissolve
5. Limited liability
6. Low compliances



## IMPORTANT DEFINITIONS

### 1. Body Corporate Section 2(1)(d) -

A BODY CORPORATE CAN BECOME A PARTNER IN LLP. SO WE NEED TO UNDERSTAND WHAT IS A BODY CORPORATE ?

It means a company as defined in section 3 of the Act and includes -

- a. a LLP registered under this Act;
- b. a LLP incorporated outside India; and
- c. a company incorporated outside India,

but does not include

- a. a corporation sole;
- b. a co-operative society registered under any law for the time being in force; and
- c. any other body corporate (not being a company as defined in section 3 of the Companies Act, 1956 or a limited liability partnership as defined in this Act), which the Central Government may, by noti- fication in the Official Gazette, specify in this behalf.

#### Means

A company & **includes** - LLP, foreign LLP, foreign company,

#### Does not include -

corporation sole; co-operative society & any other body corporate notified by Central Government.

**2. Business [Section 2(1)(e)]:**

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

LLP can't be formed for **CHARITABLE PURPOSE. ONLY PROFIT.**

**3. Designated Partner [Section 2(j)]:**

Designated partner means any partner designated as such pursuant to Sec. 7

**4. Financial Year [Section 2(1)(l)]:**

The period from -

**REGULAR Case** - the 1st April to 31st March of the following year.

**SPECIAL Case** - LLP incorporated after the 30th September of a year - the financial year may end on 31st March of the year next following that year.

**Example :**

*If a LLP has been incorporated on 15th October, 2022, then its financial year may be from 15th October, 2022 to 31st March, 2024. However, the LLP can always maintain its first accounts from 15th October, 2022 to 31st March, 2023 i.e. for a period of less than 12 months. The period for which the first accounts of LLP are prepared shall not exceed 18 months.*

*The Income Tax department has prescribed uniform financial year from 1st April to 31st March of next year. In keeping with the Income tax law, the financial year for LLP should always be from 1st April to 31st March each year.*

**5. Foreign LLP [section 2(1)(m)]:**

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

Formed / Incor. / Reg.	POB	Foreign LLP ?
In India	Within India	<b>NO (Normal LLP)</b>
Outside India	Within India	<b>YES</b>
Outside India	Outside India	<b>NO</b>
In India	Outside India	<b>NO (Normal LLP)</b>

**6. Limited Liability partnership agreement Section 2(1)(o) -**

- a. It means any written agreement between the partners of the LLP or
- b. Between the LLP and its partners

which determines the mutual rights and duties of the partners and their rights and duties in relation to that LLP.

**7. Partner [Section 2(q)]:**

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

**8. Small LLP [Section 2(1)(ta)]:**

It means a limited liability partnership (Satisfy both the conditions)

- a. Contribution of which does not exceed 25 lacs rupees or Max. not exceeding 5 crores (CG has power to increase it till this figure) as may be described

**AND**

- b. Turnover of which -
  - i. as per the statement of Accounts and Solvency for the
  - ii. immediately preceding financial year
  - iii. does not exceed 40 Lacs rupees or max. 50 crores (CG has power to increase it till this figure) as may be described

**OR**

Which meets such other requirements as may be prescribed and fulfils such terms and conditions as may be prescribed

## Section 5 - PARTNERS

Any individual or body corporate may be a partner in a LLP.

**It means** the following can become a partner in an LLP -

- Individuals (Resident Indians, including Non Resident Indians & Overseas Citizens of India as well as foreign nationals)
- Limited Liability Partnerships
- Companies (including foreign companies)
- Foreign Limited Liability Partnerships\*
- Limited Liability Partnerships incorporated outside India
- Foreign Companies.

**Who can't become a partner in an LLP ?**

- Co-operative societies and corporations sole can't become partner
- However, an individual shall not be capable of becoming a partner of a LLP, if -
  - he has been found to be of **unsound mind** by a Court of competent jurisdiction and the finding is in force;
  - he is an **undischarged insolvent**; or
  - he has **applied** to be **adjudicated** as an **insolvent** and his **application** is **pending**.

## Section 6 - MINIMUM NUMBER OF PARTNERS

1. Every LLP shall have **at least two partners**.
2. If at any time the number of **partners of a LLP is reduced below two and**
  - a. **the LLP carries on business for more than six months** while the number is so reduced
  - b. the person, who is the only partner of the LLP during the time that it so carries on business after those six months and
  - c. has the knowledge of the fact that it is carrying on business with him alone,
  - d. shall be liable personally for the obligations of the LLP incurred during that period.

## Section 7 to 10 - DESIGNATED PARTNERS

1. Every LLP shall have **at least two designated partners** -
  - a. who are individuals and
  - b. at least **one of them shall be a resident in India (ROI).**
  
2. If in LLP - ALL THE PARTNERS ARE BODY CORPORATE or  
 in which one or more partners are individuals and bodies corporate (COMBINATION) -  
**At least two individuals who are partners of such LLP or nominees of such bodies corporate shall act as designated partners.**

Resident in India:

A person who has **stayed in India** for a period of **not less than 120 days** during the financial year.

### **Example:**

**A LLP has three partners, one individual i.e. Mr. X and two bodies corporates viz. M/s XYZ Ltd and M/s ABC Ltd. In this case Mr. X and one nominee of any body's corporate shall be designated partners.**

### **Example:**

**A LLP by the name SMY LLP has three partners namely**

1. **SI Limited,**
2. **MIS Limited,**
3. **YI Private Limited.**

**As there is no individual as partner in LLP, nominees of any two said body corporates shall act as designated partners.**

### **Example:**

**There is an LLP by the name Indian Helicopters LLP having 5 partners, namely -**

**Mr. A (Non resident),  
 Mr. B (Non Resident)  
 Ms. C (resident),  
 Ms. D (resident) and  
 Ms .E (resident).**

**In this case, at least 2 should be named as Designated Partner out of which 1 should be resident. Hence, if Mr. A and Mr. B are designated then it will not serve the purpose. One of the designated partners should be there out of Ms. C, Ms. D and Ms. E.**

### 3. Some other important points related to Designated Partner -

#### Who is a Designated Partner and How Appointed:

- If the Incorporation Document:
  - Mentions specific names → those individuals will be designated partners at incorporation.
  - States all partners shall be designated → then every partner is a designated partner at some point of time (ROTATION of DPs)
  - A partner can become or cease to be a designated partner as per the LLP Agreement

#### Consent and Filing Requirements:

- An individual must give prior written consent to act as a designated partner - (DP will give his consent to the LLP in Form 9)
- The LLP must file the details of such individual with the Registrar within 30 days of appointment, in the prescribed format.

#### Eligibility & DPIN:

- The individual must meet prescribed conditions to become a designated partner.
- Every designated partner must obtain a DPIN (Designated Partner Identification Number) from the Central Government
- Sections 153 to 159 of the Companies Act, 2013 related to Director Identification Numbers apply mutatis mutandis (i.e., with necessary changes) to DPIN (DIN is also sufficient)

BASIS	Partners	Designated Partners
<b>MIN</b>	2 (Special case of 6 months)	2
<b>MAX</b>	No limit	No limit
<b>WHO ?</b>	Individual (Anyone) & Body Corporate	Only Individual and one ROI (Nominee or Representative in case of Body corporate )
<b>WHAT ?</b> <b>Section 8</b>	Business	Compliances like filing, return, statement and like reports. He is liable to all penalties.

Designated partners - Section 8 to 10	
Section	Explanation
<b>Section 8</b>  <b>Liabilities of Designated Partners</b>	<ul style="list-style-type: none"> <li>● A designated partner shall be responsible for all acts and matters required to be done by the LLP regarding compliance with the provisions of this Act,</li> <li>● including filing of any document, return, statement, and other reports, as specified in the LLP Agreement.</li> <li>● He shall also be liable to all penalties imposed on the LLP for contravention of such provisions.</li> </ul>
<b>Section 9</b>  <b>Changes in Designated Partners</b>	<ul style="list-style-type: none"> <li>● A limited liability partnership must appoint a new designated partner within 30 days of any vacancy.</li> <li>● Any kind of change/appointment/consent of partners or DPs in Form 4.</li> <li>● The provisions of sub-section (4) and (5) of section 7 will apply to the new designated partner.</li> <li>● If no new designated partner is appointed, or there is only one designated partner at any time, then all the partners shall be deemed to be designated partners.</li> </ul>
<b>Section 10(a)</b>  <b>Contravention of Section 7(1)</b>	<ul style="list-style-type: none"> <li>● If the LLP fails to have at least two designated partners or no designated partner is resident in India,</li> <li>● the LLP and every partner shall be liable to a penalty of ₹10,000 and,</li> <li>● in case of a continuing contravention, to a further penalty of ₹100 per day, subject to a maximum of ₹1,00,000 for the LLP and ₹50,000 for every partner.</li> </ul>
<b>Section 10(b)</b>  <b>Contravention of Section 7(4)</b>	<ul style="list-style-type: none"> <li>● If the LLP fails to file the consent of a designated partner within 30 days of his appointment,</li> <li>● the LLP and every designated partner shall be liable to a penalty of ₹5,000 and,</li> <li>● in case of a continuing contravention, to a further penalty of ₹100 per day, subject to a maximum of ₹50,000 for the LLP and ₹25,000 for each designated partner.</li> </ul>
<b>Section 10(c)</b>  <b>Contravention of Section 7(5) or 9</b>	<ul style="list-style-type: none"> <li>● If the LLP contravenes the provisions of section 7(5) or section 9,</li> <li>● it shall be liable along with every partner to a penalty of ₹10,000 and,</li> <li>● in case of a continuing contravention, to a further penalty of ₹100 per day, subject to a maximum of ₹1,00,000 for the LLP and ₹50,000 for every partner.</li> </ul>

## SOME OTHER DEFINITIONS

Definition	Description
<p style="text-align: center;"><b>Address</b> [Section 2(1)(a)]</p>	<p>For an individual: their usual home address.</p> <p>For a body corporate: its registered office address.</p>
<p style="text-align: center;"><b>Chartered Accountant</b> [Section 2(1)(f)]</p>	<p>A CA as per the Chartered Accountants Act, 1949 who also holds a certificate of practice under that Act.</p>
<p style="text-align: center;"><b>Entity</b> [Section 2(1)(k)]</p>	<p>Any body corporate. For specific sections (18, 46–50, 52, 53), it also includes a partnership firm under the Indian Partnership Act, 1932.</p>
<p style="text-align: center;"><b>LLP Agreement</b> [Section 2(1)(o)]</p>	<p>A written agreement between partners or between LLP and partners that sets their mutual rights and duties. First Schedule applies where no agreement exists.</p>
<p style="text-align: center;"><b>Name</b> [Section 2(1)(p)]</p>	<p>For an individual: includes first, middle, and last name.</p> <p>For a body corporate: its registered name.</p>
<p style="text-align: center;"><b>Regional Director</b> [Section 2(1)(ra)]</p>	<p>An official appointed by the Central Government under this Act or the Companies Act, 2013.</p>
<p style="text-align: center;"><b>Registrar</b> [Section 2(1)(s)]</p>	<p>A person appointed by the Central Government (Registrar, Joint Registrar, etc.) under this Act or the Companies Act, 2013.</p>
<p style="text-align: center;"><b>Tribunal</b> [Section 2(1)(u)]</p>	<p>Refers to the National Company Law Tribunal (NCLT) set up under Section 408 of the Companies Act, 2013.</p>

## CHARACTERISTIC OF LLP

S.No.	Characteristics	
1.	<b>LLP is a Body Corporate</b>	
<b>From the Company's Angle - T.O.P .C.L.A.S.S</b>		
2.	<b>P</b>	Perpetual Succession
3.	<b>C</b>	Common Seal
4.	<b>L</b>	Limited liability
5.	<b>A</b>	Artificial Legal Person
6.	<b>S</b>	Separate Legal Entity
7.	<b>S</b>	Separate Property and Suing power
<b>Characteristics - From the Partnership Firm's angle</b>		
8.	<b>Flexibility</b>	LLP Agreement
<b>Other Characteristics</b>		
9.	<b>Agency</b>	Mutual Agency
10.	<b>Partners</b>	Minimum and Maximum partners
11.	<b>Purpose</b>	Only for Business - Profit Purpose
12.	<b>Foreign LLP</b>	LLP could be incorporated outside India
13.	<b>Management</b>	Designated Partners
14.	<b>Conversion</b>	Partnership firm, Private and Unlisted Public company can be converted into LLP

**1. LLP is a Body Corporate:**

- Section 3 of LLP Act provides that a LLP is a body corporate formed and incorporated under this Act and
- is a legal entity separate from that of its partners.

**2. Perpetual Succession:**

- The LLP can continue its existence irrespective of changes in partners.
- Death, insanity, retirement or insolvency of partners has no impact on the existence of LLP.
- It is capable of entering into contracts and holding property in its own name.

**3. Separate Legal Entity:**

- The LLP is a separate legal entity, is liable to the full extent of its assets but
- liability of the partners is limited to their agreed contribution in the LLP.
- In other words, creditors of LLP shall be the creditors of LLP alone.

**4. Mutual Agency:**

- No partner is liable on account of the independent or unauthorized actions of other partners,
- thus individual partners are shielded from joint liability created by another partner's wrongful business decisions or misconduct.
- In other words, all partners will be the agents of the LLP alone. No one partner can bind the other partner by his acts.

**5. LLP Agreement:**

- Mutual rights and duties of the partners within a LLP are governed by an agreement between the partners.
- The LLP Act, 2008 provides flexibility to partner to devise the agreement as per their choice.
- In the absence of any such agreement, the mutual rights and duties shall be governed by the provisions of the LLP Act, 2008.

**6. Artificial Legal Person:**

- A LLP is an artificial legal person because it is created by a legal process and is clothed with all the rights of an individual.
- It can do everything which any natural person can do,
- except of course that, it cannot be sent to jail, cannot take an oath, cannot marry or get a divorce
- nor can it practise a learned profession like CA or Medicine.
- A LLP is invisible, intangible, immortal (it can be dissolved by law alone) but not fictitious because it really exists.

**7. Common Seal:**

- A LLP being an artificial person can act through its partners and designated partners.
- LLP may have a common seal, if it decides to have one [Section 14(c)].
- Thus, it is not mandatory for a LLP to have a common seal.
- It shall remain under the custody of some responsible official and it shall be affixed in the presence of at least 2 DPs of the LLP.

**8. Limited Liability: SECTION 26**

- Every partner of a LLP is, for the purpose of the business of LLP,
- the agent of the LLP, but not of the other partners.

The liability of the partners will be limited to their agreed contribution in the LLP. Such contribution may be of tangible or intangible nature or both

**Example:** *The professionals like Engineering consultants, Legal Advisors and Accounting Professional are afraid of entering into business due to unlimited liability.*

*Hence the LLP partnership Act provides an avenue for these professionals to Limited Liability Partnership firms which restricts their liability to the agreed amount. This has encouraged Professionals to form LLP.*

**9. Management of Business:**

- The partners in the LLP are entitled to manage the business of LLP. But only the designated partners are responsible for legal compliances.

**10. Minimum and Maximum number of Partners:**

- Every LLP shall have at least two partners and
- shall also have at least 2 individuals as designated partners,
- of whom at least one shall be resident in India.
- There is no maximum limit on the partners in LLP

**11. Business for Profit Only:**

- The essential requirement for forming LLP is carrying on a lawful business
- with a view to earn profit.
- Thus LLP cannot be formed for charitable or non-economic purpose.

**12. Investigation:**

- The Central Government shall have powers to investigate the affairs of an LLP by appointment of competence authority for the purpose.

**13. Compromise or Arrangement:**

- Any compromise or arrangement including merger and amalgamation of LLPs shall be in accordance with the provisions of the LLP Act, 2008.

**14. Conversion into LLP:**

- A firm,
- private company or
- an unlisted public company would be allowed to be converted into LLP in accordance with the provisions of LLP Act, 2008.

**15. E-Filing of Documents:**

- Every form or application of document required to be filed or delivered under the act and rules made thereunder,
- shall be filed in computer readable electronic form on
- its [website www.mca.gov.in](http://www.mca.gov.in) and
- authenticated by a partner or designated partner of LLP by the use of electronic or digital signature.

**16. Foreign LLPs:**

- Section 2(1)(m) - A LLP formed, incorporated, or registered outside India
- which established a place of business within India.
- Foreign LLP can become a partner in an Indian LLP.

**3. INCORPORATION OF LLP**

Section	Description
11	Incorporation document
12	Incorporation by registration
13	Registered office of LLP and change therein
14	Effect of registration
15	Name
16	Reservation of name
17	Change of name of LLP

**Step1**

**Reservation of name of LLP:** Applicant has to file e-Form RUNLLP, for ascertaining availability and reservation of the name of a LLP.

**Step2**

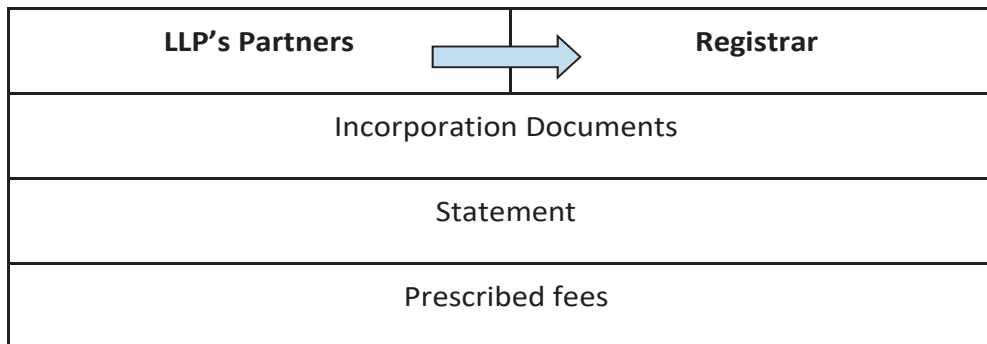
**File e- Form FiLLiP for incorporating a new LLP:** contains the details of proposed LLP, details of partners/designated partners and their consent.

**Step3**

Execution of **LLP Agreement** is mandatory as per Section 23 of Act. It will be filed in **e-Form 3** within 30 days of incorporation of LLP.

**INCORPORATION DOCUMENT (Section 11)**

The most important document need for registration is the incorporation document.



1. For a LLP to be incorporated:
  - a. two or more persons associated for carrying on
    - a lawful business with
    - a view to profit
    - shall subscribe their names to an incorporation document;
  - b. the incorporation document shall be filed
    - in such manner and with such fees, as may be prescribed
    - with the Registrar of the State (Incorporation documents are now processed electronically by Registrar, Central Registration Centre since 2nd October 2018)
    - in which the registered office of the LLP is to be situated; and
  - c. Statement to be filed along with the incorporation document, a statement in the prescribed form -
    - a. Made by either an advocate, or a Company Secretary or a Chartered Accountant or a Cost Accountant, who is engaged in the formation of the LLP and
    - b. by **ANY ONE** who subscribed his name to the incorporation document,

- that **all the requirements of this Act and the rules made thereunder have been complied with,**
- **in respect of incorporation and matters precedent and incidental thereto.**

2. The incorporation document shall:

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

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

- a. **knows to be false;** or
- b. 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.**

### **INCORPORATION BY REGISTRATION (Section 12)**

1. When the requirements imposed by clauses (b) and (c) of sub-section (1) of section 11 have been complied with,  
the Registrar shall retain the incorporation document and 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 clause (c) of sub-section (1) of section 11 **as sufficient evidence that the requirement imposed by clause (a) of that sub-section has been complied with.**
3. The certificate issued under clause (b) of sub-section (1) **shall be signed by the Registrar and authenticated by his official seal.**
4. The certificate shall be conclusive evidence that the **LLP is incorporated by the name specified there- in.**

### 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 or 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 and any other address specifically declared by the LLP for the purpose in such form and 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 such form and manner and subject to such conditions as may be prescribed and any such change shall take effect only upon such filing.
4. If the LLP contravenes any provisions of this section, the LLP and its every partner shall be punishable with fine which shall not be less than Rs. 2,000 but which may extend to Rs. 25,000.

### EFFECT OF REGISTRATION (Section 14 )

On Registration, LLP shall by its name, be capable of -

1. Suing 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 and suffering other acts and things as bodies corporate may lawfully do and suffer.

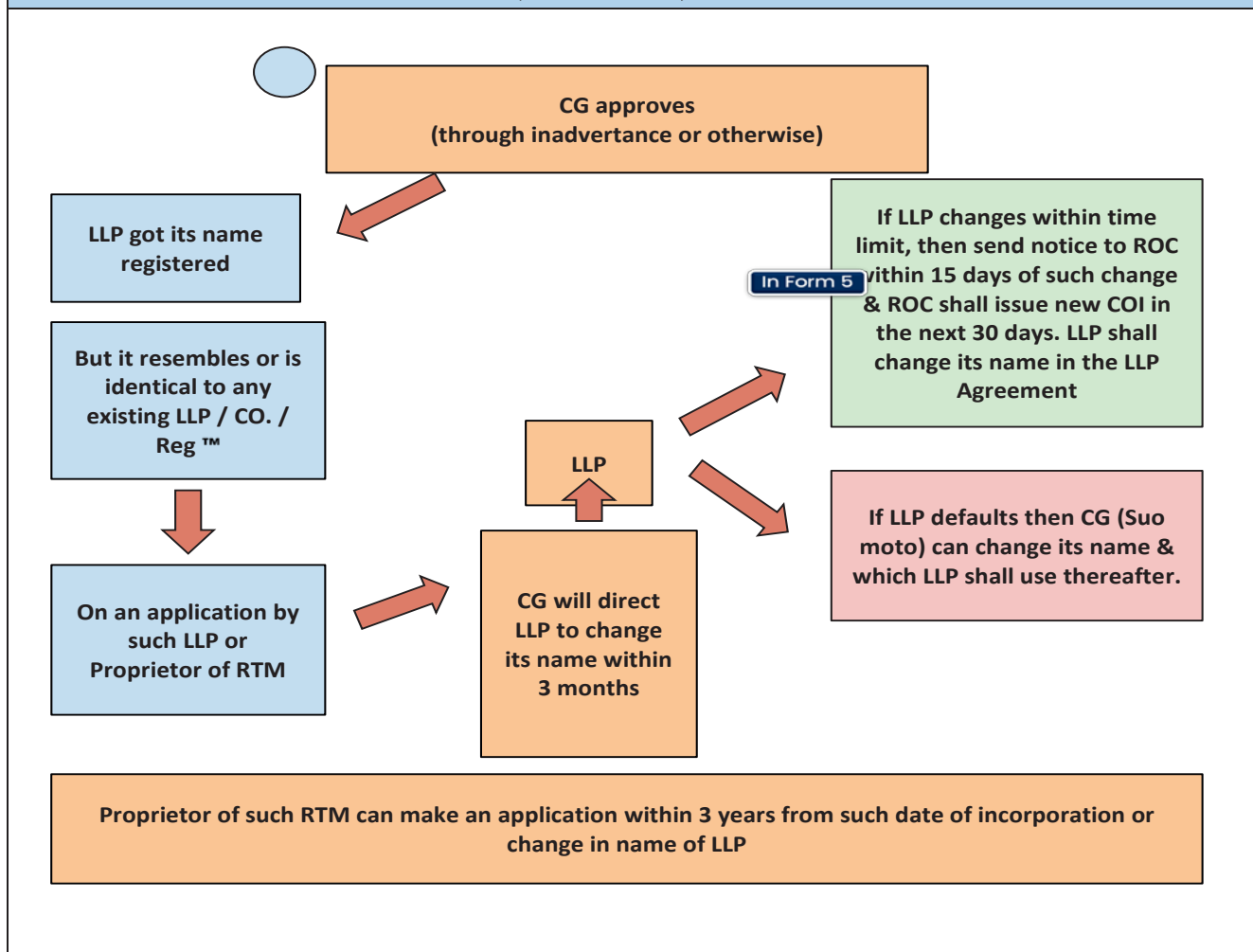
### NAME (Section 15)

1. Every limited liability partnership shall have either the words "limited liability partnership" or the acronym "LLP" as the last words of its name.
2. No LLP shall be registered by a name which, in the opinion of the Central Government is-
  - a. undesirable; or
  - b. identical or
  - c. too nearly resembles to that of any other partnership firm or LLP or body corporate or a registered trade mark, or a trade mark which is the subject matter of an application for registration of any other person under the Trade Marks Act, 1999.

**RESERVATION OF NAME (Section 16)**

1. A person may apply in such form and manner and
2. accompanied by such fee as may be prescribed to the Registrar
3. for the reservation of a name set out in the application as -
  - a. the name of a proposed LLP; or
  - b. the name to which a LLP proposes to change its name.
4. Upon receipt of an application under sub-section (1) and on payment of
  - the prescribed fee,
  - the Registrar may, if he is satisfied,
  - subject to the rules prescribed by the Central Government in the matter,
  - that the name to be reserved is not one which may be rejected on
  - any ground referred to in sub-section (2) of section 15,
  - reserve the name for a period of 3 months from the date of intimation by the Registrar.

**CHANGE OF NAME OF LLP (Section 17)**



1. Notwithstanding anything contained in sections 15 and 16,
  - if through inadvertence or otherwise (galti se),
  - a LLP, on its first registration or
  - on its registration by a new body corporate,
  - its registered name, is registered by
  - a name which is identical with or too nearly resembles to —
    - that of any other LLP or a company; or
    - a registered trademark of a proprietor under the Trade Marks Act, 1999, as is likely to be mistaken for it,
  - then on an application of such LLP or proprietor ★ referred to in clauses (a) and (b) respectively or a company,
  - the Central Government may direct that such LLP to change its name or new name
  - within a period of 3 months from the date of issue of such direction.

It is further provided that - ★

- an application of the proprietor of the registered trademarks shall be maintainable
- within a period of 3 years from
- the date of incorporation or registration or change of name of the LLP under this Act.

2. Where a LLP changes its name or obtains a new name under sub-section (1) -
  - it shall within a period of 15 days
  - from the date of such change, give notice of the change to Registrar along with the order of the Central Government,
  - who shall carry out necessary changes in the certificate of incorporation and
  - within 30 days of such change in the certificate of incorporation,
  - such LLP shall change its name in the LLP agreement.
3. If the LLP is in default in complying with any direction given under sub-section (1) -
  - the Central Government shall allot a new name to the LLP in such manner as may be prescribed and
  - the Registrar shall enter the new name in the register of LLP in place of the old name and
  - issue a fresh certificate of incorporation with new name,
  - which the LLP shall use thereafter.

Nothing contained in this subsection shall prevent a LLP from subsequently changing its name in accordance with the provisions of section 16.

<p><b>Application for direction to change Name in certain circumstances [Sec. 18]</b></p>	<p>(a) Any entity which already has a Name similar to the Name of a LLP which has been incorporated subsequently, may apply to the Registrar to give a direction to any LLP, on a ground referred to in Sec. 17 to change its name.</p> <p>(b) The Registrar shall not consider any application unless it is received within 24 months from the date of registration of the LLP under that name.</p>
<p><b>Change of Registered Name [Sec. 19]</b></p>	<p>Any LLP may change its Name registered with the Registrar by filing with him a Notice of such change in such form and manner and on payment of such fees as may be prescribed.</p>
<p><b>Penalty for improper use of words "Limited Liability Partnership" or "LLP" [Sec.20]</b></p>	<p>If any person or persons carry on business under any name or title of which the words "Limited Liability Partnership" or "LLP" or any contraction or imitation thereof is or are the last word or words, that person or each of those persons shall, unless duly incorporated as LLP, be punishable with fine which shall not be less than 50,000 but which may extend to 5 Lakhs.</p>

## 4. PARTNERS AND THEIR RELATIONS

### ELIGIBILITY TO BE PARTNERS [Section 22]

#### Who can be a Partner ?

- On the incorporation of a LLP,
- the persons who subscribed their names to the incorporation document (FiLLP)
- shall be its partners and
- any other person may become a partner of the LLP
- by and in accordance with the LLP agreement (Later/subsequent)

### RELATIONSHIP OF PARTNERS [Section 23]

#### 1. Governing Rights and Duties:

- The mutual rights and duties of LLP partners and between the LLP and its partners are primarily governed by the LLP agreement.

#### 2. Filing of Agreement:

- The LLP agreement and any changes must be filed with the Registrar as per prescribed rules. (Form 3)

**3. Pre-incorporation Agreement:**

- An agreement made before LLP incorporation among each other can bind the LLP if it is ratified by all partners after incorporation.

**4. Absence of LLP Agreement:**

- If no LLP agreement exists, the First Schedule of the LLP Act will determine the mutual rights and duties.

**CESSATION OF PARTNERSHIP INTEREST [Section 24]**

<b>Cessation of Partnership</b>	<ul style="list-style-type: none"> <li>● As per the <b>agreement</b> with other partners OR</li> <li>● <b>30 days written notice</b> to other partners of resignation. (Absence of Agreement)</li> </ul>
<b>A person ceases to be a partner</b>	<b>Automatically upon –</b> <ul style="list-style-type: none"> <li>● <b>Death</b> or <b>dissolution</b> of the LLP</li> <li>● Being declared <b>of unsound mind</b> by a competent court</li> <li>● Applying for or being declared <b>insolvent</b></li> </ul>
<b>Dealing with a Former Partner</b>	<b>He will be regarded as a partner unless -</b> <ul style="list-style-type: none"> <li>● The person dealing with the LLP has <b>notice</b> that the former partner has ceased to be a partner, OR</li> <li>● A <b>notice of cessation</b> has been delivered to the Registrar</li> </ul>
<b>Obligations Post-Cessation</b>	Cessation does not discharge the former from obligations incurred WHILE being a partner.
<b>Entitlement on Cessation</b>	A former partner or their legal representative (on death/insolvency) is entitled to:
	<ul style="list-style-type: none"> <li>● The <b>capital contribution</b> they actually made to the LLP.</li> <li>● Their share in <b>accumulated profits</b> (after deducting accumulated losses), calculated as on the cessation date.</li> </ul>
<b>No Right in Management</b>	A former partner or their LR has <b>no right to interfere</b> in the management of the LLP.

<b>REGISTRATION OF CHANGES IN PARTNERS [Section 25]</b>	
<b>Partner's Duty to Inform LLP</b>	Every partner must inform the LLP of any change in name or address within <b>15 days</b> of the change in <b>Form 6</b>
<b>LLP's Duty – To File Notices in Form 4</b>	The LLP must file a notice with the Registrar within <b>30 days</b> in cases of:
	<ul style="list-style-type: none"> <li>• A person becoming or ceasing to be a partner.</li> <li>• Any change in the name or address of a partner.</li> </ul>
<b>Notice Filing Requirements</b>	A notice filed with the Registrar must:
	<ul style="list-style-type: none"> <li>• In prescribed <b>form</b> and fees.</li> <li>• Be signed by the <b>designated partner</b> and authenticated as prescribed.</li> <li>• For incoming partners: include a <b>statement of consent</b>, signed and authenticated</li> </ul>
<b>Penalty on LLP</b>	If the LLP fails to comply (2) LLP & every DP are liable for a <b>penalty of ₹10,000</b> .
<b>Penalty on Partner</b>	If a partner fails to comply with (1) they are liable for a <b>penalty of ₹10,000</b> .
<b>Filing by Outgoing Partner</b>	<ul style="list-style-type: none"> <li>• An outgoing partner can directly file a notice with the Registrar if they believe the LLP may not do so.</li> <li>• The Registrar will confirm unless the LLP has already filed the notice and</li> <li>• <b>If no confirmation from LLP within 15 days,</b></li> <li>• the Registrar will register the notice filed by the outgoing partner</li> </ul>

<b>EXTENT AND LIMITATION OF LIABILITY OF LLP AND PARTNER</b>	
<b>PARTNER AS AGENT [Section 26]</b>	
<ol style="list-style-type: none"> <li>1. Every partner of a LLP is,</li> <li>2. for the purpose of the business of the LLP,</li> <li>3. the agent of the LLP,</li> <li>4. but not of other partners.</li> <li>5. Hence, mutual agency between the partners is not present.</li> </ol>	

**EXTENT OF LIABILITY OF LLP [SECTION 27]**

- An LLP is not bound by an act done by a partner when –
  - The partner has no authority and
  - The other person has knowledge of no authority or
  - Does not know or believe him to be a partner of the LLP.
- The LLP is liable –
  - For a partner’s wrongful act or omission on his part
  - during the business of the LLP or with its authority.
- An obligation of the LLP whether arising in contract or otherwise, shall be solely the obligation of the LLP. (Not partner’s because of the concept of Separate Legal Entity. The liabilities of the LLP shall be met out of the property of the LLP it means Partner’s liability will be till the unpaid amt on contribution only)

**EXTENT OF LIABILITY OF PARTNER [Section 28]**

- A partner is not personally liable, directly or indirectly for –
  - An obligation referred to in 27 (3)
- Section 27(3) and sub-section (1) of this section 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.

**HOLDING OUT [Section 29]**

Who is liable?	Any person who:
	Represents himself (by words or conduct) as a partner of an LLP, OR
	Knowingly allows others to represent him as a partner.
Liability arises when?	A third party, relying on this representation, gives credit to the LLP.
	It does not matter if the person knows whether the representation has reached the third party.

Extent of liability	The person representing himself or being represented is liable for the credit given to the LLP.
LLP's liability	If the LLP receives credit or financial benefit due to such representation:
	The LLP is liable only to the extent of the credit received or benefit derived.
After partner's death	If the LLP continues using the deceased partner's name in the LLP name:
	This does not make the deceased partner's legal representative or estate liable for future acts.

### UNLIMITED LIABILITY IN CASE OF FRAUD [Section 30]

Concept	Description
<b>When liability becomes unlimited?</b>	If the LLP or its partners act with intent to defraud creditors or for any fraudulent purpose.
	Partners involved are personally liable for all debts/liabilities arising from such acts.
<b>LLP's liability for partner's fraud</b>	LLP is liable to the same extent as the partner, unless the LLP proves:
	1. The fraudulent act was done without the LLP's knowledge, OR
	2. The fraudulent act was done without the LLP's authority.
<b>Penalty for knowingly carrying on fraudulent business</b>	Imprisonment: Up to 5 years.
	Fine: Minimum ₹50,000 and up to ₹5,00,000.
<b>Compensation</b>	LLP and the involved Partner/DP/Employee must compensate persons who suffered losses.
<b>Exemption for LLP</b>	LLP is not liable if it can prove the fraud was without its knowledge.

**WHISTLE BELONG [Section 31]****1. Penalty Reduction or Waiver:**

- The Court or Tribunal may reduce or waive penalties for a partner or employee if:
  - (a) They provided useful information during an investigation, OR
  - (b) Their information led to the LLP, partner, or employee being convicted under the LLP Act or any other law.

**2. Protection for Whistleblowers:**

No partner or employee can face discharge, demotion, suspension, harassment, or any other discrimination for providing such information.

**CONTRIBUTIONS - Section 32 AND 33**

Basis	Section 32 Form of Contribution	Section 33 Obligation to Contribute
<b>Nature of Contribution –</b>	Tangible property (Movable or immovable) and Intangible property (IP)	
<b>Contribution can include</b>	Other benefits like Money, PN, Agreements to contribute cash or property and Contracts for services (performed or to be performed).	Partner's obligation to contribute is defined by the <b>LLP Agreement</b> .
<b>Valuation and Disclosure</b>	The <b>monetary value</b> of each partner's contribution must be <b>accounted for and disclosed</b> in the LLP's accounts as prescribed.	Creditors relying on a partner's obligation (without notice of any compromise between partners) may <b>enforce the original obligation</b> on any partner.
<b>Creditor Rights</b>	Not covered.	Creditors can act on the partner's original obligation described in the LLP Agreement, provided they acted <b>without notice</b> of internal compromises.

## 5. FINANCIAL DISCLOSURES - Section 34 TO 37

Section 34 - Maintenance of books of account, other records and audit, etc.

Sub Section		Description
Title		
1	Proper Books of Account	LLP must maintain proper books of account:
		- On cash or accrual basis using double-entry system.
		- At its registered office.
		- For the period as prescribed.
2	Statement of Account and Solvency	LLP must prepare a Statement of Account and Solvency:
		- Within 6 months from the end of the financial year.
		- As at the last day of the financial year.
		- In the prescribed form, signed by the designated partners.
3	Filing with Registrar	LLP must file the Statement of Account and Solvency with the Registrar within the prescribed time and fees.
4	Audit of Accounts	Accounts must be audited as per prescribed rules.
		- Exemption: Central Government may exempt certain LLPs via notification.
5	Penalty for Filing Non-Compliance	For non-compliance of filing (Point 3):
		- LLP: ₹100/day (maximum ₹1,00,000).
		- Designated Partners: ₹100/day (maximum ₹50,000).
6	Penalty for General Non-Compliance	For non-compliance of Points 1, 2 & 4:
		- LLP: ₹25,000 to ₹5,00,000.
		- Designated Partners: ₹10,000 to ₹1,00,000.

<b>Accounting and auditing standards [Section 34A]</b>	<p>Central Government may, in consultation with the National Financial Reporting Authority (NFRA) constituted under Section 132 of the Companies Act, 2013 —</p> <ul style="list-style-type: none"> <li>- Prescribe the standards of accounting; and</li> <li>- Prescribe the standards of auditing, as recommended by ICAI.</li> </ul>
<b>Section 35 – Annual Return</b>	<p>Every LLP shall file an <b>annual return</b>, duly authenticated, with the <b>Registrar within 60 days</b> of the closure of its financial year, in such <b>form, manner and fee</b> as may be prescribed.</p>
<p><b>Example:</b></p> <p><i>Suppose, the financial year of a LLP closes on 31st March, 2022 then the LLP has to file an annual return with the Registrar latest by 30th May, 2022.</i></p> <p><b>Note: The LLP contra-distinct from Partnership Act, 1932 has prescribed the filing of Annual Return in accordance with the Companies Act, 2013. This is a new feature of the LLPs.</b></p>	
<b>Penalty for Non-filing</b>	<ul style="list-style-type: none"> <li>- <b>LLP: ₹100 per day, up to ₹1,00,000</b></li> <li>- <b>Every Designated Partner: ₹100 per day, up to ₹50,000</b></li> </ul>
<b>Section 36 – Inspection of Documents kept by Registrar</b>	<p>The following documents filed by an LLP with the Registrar shall be <b>available for inspection</b> by any person, in such manner and on payment of such fee as may be prescribed:</p> <ul style="list-style-type: none"> <li>- Incorporation document</li> <li>- Name of partners and changes therein</li> <li>- Statement of Account and Solvency</li> <li>- Annual Return</li> </ul>
<b>Section 37 – Penalty for False Statement</b>	<p>If <b>any person</b> makes a statement in a return, statement, or any document required under the LLP Act:</p> <ul style="list-style-type: none"> <li>- <b>Which is false in any material particular, knowing it to be false, or</b></li> <li>- <b>Omits any material fact, knowing it to be material, → He shall be punishable with imprisonment up to 2 years, and shall also be liable to a fine of minimum ₹1,00,000 and up to ₹5,00,000, unless otherwise expressly provided in the Act.</b></li> </ul>

## POWER OF REGISTRAR TO OBTAIN INFORMATION [Section 38]

### 1. Registrar's Power to Seek Information:

- The Registrar can require any person (current/former partner, designated partner, or employee of an LLP) to:
  - Answer questions.
  - Make declarations.
  - Provide details in writing within a reasonable period.

### 2. Failure to Provide Satisfactory Information:

- If a person fails to comply or the Registrar finds the reply/declaration/details unsatisfactory, the Registrar may summon the person to:
  - Appear before the Registrar or a designated officer.
  - Provide required answers or details.

### 3. Penalty for Non-Compliance:

- Failure to comply with the Registrar's summons or requisition without lawful excuse is punishable with:
  - A fine of 2,000 to ₹25,000.

## COMPOUNDING OF OFFENCES [Section 39]

<b>Authority to Compound Offences</b>	Regional Director or officer (not below the rank of RD) authorized by the Central Government may compound offences punishable with fines only.
<b>Limitation on Compounding</b>	<ul style="list-style-type: none"> <li>• Offences committed within 3 years of a previously compounded similar offence cannot be compounded.</li> <li>• Offences after 3 years are considered as first offences.</li> </ul>
<b>Application Process</b>	Applications must be made to the Registrar - FORWARDS TO RD
<b>Intimation to Registrar</b>	Intimation of compounding must be sent to the Registrar within 7 days

<b>Filing/Compliance Orders</b>	- RD or authorized officer can direct the LLP or its partners to file required returns, accounts, or documents within a specified time.
<b>Non-Compliance of Orders</b>	- If orders are not complied with, the maximum fine for the offence shall be <b>twice the amount</b> prescribed in the relevant section of the Act.

## 6. ASSIGNMENT AND TRANSFER OF PARTNERSHIP RIGHTS PARTNER'S TRANSFERABLE INTEREST [SECTION 42]

1. The rights of a partner to a share of the profits and losses of the limited liability partnership and to receive distributions in accordance with the limited liability partnership agreement are transferable either wholly or in part.
2. The transfer of any right by any partner pursuant to sub-section (1) does not by itself cause the disassociation of the partner or a dissolution and winding up of the limited liability partnership.
3. The transfer of right pursuant to this section does not, by itself, entitle the transferee or assignee to participate in the management or conduct of the activities of the limited liability partnership, or access information concerning the transactions of the limited liability partnership.

## 7. CONVERSION INTO LLP

- **Conversion from firm into LLP [Section 55]:** A firm may convert into an LLP in accordance with the provisions of this Chapter and the Second Schedule.
- **Conversion from private company into LLP [Section 56]:** A private company may convert into an LLP in accordance with the provisions of this Chapter and the Third Schedule.
- **Conversion from unlisted public company into LLP [Section 57]:** An unlisted public company may convert into an LLP in accordance with the provisions of this Chapter and the Fourth Schedule.

### Registration and effect of conversion [Section 58]

<b>Registration Process</b>	The registrar registers the submitted documents if the firm, private company, or unlisted public company complies with the respective schedules and rules.
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	Issues a certificate of registration specifying the date of registration.
<b>Notification to Concerned Registrar</b>	LLP must inform the concerned Registrar of Firms or Registrar of Companies about the conversion within 15 days of registration.
<b>Binding Obligations</b>	Upon conversion, the partners/shareholders and the LLP are bound by the respective schedules applicable to them.
<b>Effects of Conversion</b>	From the date specified in the registration certificate:
	<ul style="list-style-type: none"> <li>• An LLP is formed by the name specified in the certificate.</li> </ul>
	<ul style="list-style-type: none"> <li>• All assets, liabilities, rights, and obligations of the firm/company automatically transfer to the LLP.</li> </ul>
	<ul style="list-style-type: none"> <li>• The firm or company is deemed dissolved and removed from the records of the Registrar of Firms or Registrar of Companies.</li> </ul>

### **FOREIGN LLP - FOREIGN LIMITED LIABILITY PARTNERSHIPS** [Section 59]

- The Central Government may make rules for provisions in relation to the establishment of place of business by foreign LLP within India and
- carrying on their business therein by applying or incorporating, with such modifications,
- as appear appropriate, the provisions of the Companies Act, 2013 or such regulatory mechanism with such composition as may be prescribed.

## **8. COMPROMISE, ARRANGEMENT OR RECONSTRUCTION OF LLP - SECTIONS 60 TO 65**

### **Section 60 - When a Compromise or Arrangement is Proposed**

A compromise or arrangement can be proposed—

- (a) between an LLP and its creditors; or
- (b) between an LLP and its partners.

<b>Who may apply to the Tribunal ?</b>	The LLP, any creditor, any partner, or in case of winding up, the liquidator, may apply to the Tribunal.
<b>Tribunal's power to order a meeting</b>	The Tribunal may order a meeting of creditors or partners to be called, held and conducted as prescribed or as it directs.
<b>Majority required for approval</b>	If three-fourths in value of the creditors or partners at the meeting agree to the compromise or arrangement, and the Tribunal sanctions it, it shall be binding on all such creditors or partners and the LLP, or the liquidator and contributories (in case of winding up).
<b>Tribunal's condition before sanctioning</b>	Tribunal shall not sanction any compromise or arrangement unless it is satisfied that all material facts about the LLP (including latest financial position and any pending investigation) have been disclosed by affidavit or otherwise.
<b>Filing with Registrar</b>	The Tribunal's order must be filed with the Registrar within 30 days, and the order becomes effective only after such filing.
<b>Penalty for default in filing</b>	If there is default in filing the order with Registrar, the LLP and its every designated partner shall be liable to a penalty of ₹10,000 and in case of continuing default, with further penalty of ₹100 per day, subject to a maximum of ₹1,00,000 for LLP and ₹50,000 for each designated partner.
<b>Power to stay proceedings</b>	The Tribunal may, after an application has been made, stay the commencement or continuation of any suit or proceeding against the LLP on such terms as it thinks fit, until the application is finally disposed of.
<b>Section 61: Power of Tribunal to Enforce Compromise or Arrangement</b>	
<b>Power to supervise</b>	Where the Tribunal makes an order under section 60 sanctioning a compromise or arrangement in respect of an LLP, it <b>shall have the power to supervise</b> the carrying out of the same.
<b>Power to modify or direct</b>	The Tribunal may, at the time of making such order or anytime thereafter, <b>give directions or make modifications</b> as it may consider necessary for the proper working of the compromise or arrangement.

<b>Power to order winding up</b>	If the Tribunal is satisfied that the compromise or arrangement cannot be worked satisfactorily (with or without modifications), it may, <b>on its own or on application of any interested person</b> , order winding up of the LLP. Such an order shall be deemed as made under section 64.
<b>Section 62: Reconstruction or Amalgamation of LLPs</b>	
<b>Applicability</b>	When an application is made under Section 60 for sanctioning a compromise or arrangement, and it is shown that:  (a) The compromise/arrangement is for a scheme of reconstruction or amalgamation of LLPs; and  (b) Under the scheme, whole or part of the undertaking, property, or liabilities of a "transferor LLP" is to be transferred to a "transferee LLP".
<b>Tribunal's Power</b>	The Tribunal may, by order sanctioning the scheme or a later order, make provision for the following:
<b>(i) Transfer of Property/Liabilities</b>	Transfer to the <b>transferee LLP</b> of the whole or part of the <b>undertaking, property or liabilities</b> of the <b>transferor LLP</b> .
<b>(ii) Legal Proceedings</b>	Continuation of <b>legal proceedings</b> by or against the transferee LLP that were pending by or against the transferor LLP.
<b>(iii) Dissolution Without Winding Up</b>	<b>Dissolution of the transferor LLP without winding up.</b>
<b>(iv) Dissenting Persons</b>	Provision for any <b>person dissenting from the scheme</b> , as per directions of the Tribunal.
<b>(v) Incidental Provisions</b>	Any <b>incidental, consequential or supplemental matters</b> needed to ensure effective implementation of the scheme.
<b>Conditions for Amalgamation in Winding Up</b>	Tribunal shall not sanction <b>amalgamation of an LLP being wound up</b> unless the <b>Registrar reports</b> that its affairs have <b>not been conducted prejudicially</b> to partners or public interest.
<b>Condition for Dissolution</b>	No <b>dissolution of transferor LLP</b> shall be ordered unless the <b>Official Liquidator reports</b> that its affairs were <b>not prejudicial</b> to partners or public interest.

<b>Effect of Order</b>	If order provides for transfer of property/liabilities, they shall automatically be <b>vested in</b> or <b>become liabilities of</b> the transferee LLP; property can also be transferred <b>free of any charge</b> if the order so states.
<b>Filing with Registrar</b>	Every LLP involved must file a <b>certified copy of the Tribunal order</b> with the Registrar <b>within 30 days</b> of the order.
<b>Penalty for Default in Filing</b>	Default in filing leads to penalty of <b>₹10,000</b> , and in case of continuing default, <b>₹100 per day</b> , up to a max of <b>₹1,00,000 for LLP</b> and <b>₹50,000 per designated partner</b> .
<b>Explanation</b>	"Property" includes all kinds of <b>rights and powers</b> ; "Liabilities" include <b>all kinds of duties</b> .
<b>Restriction</b>	<b>A LLP shall not be amalgamated with a company.</b>

Section	TITLE	Details
63	<b>Winding Up and Dissolution of LLPs</b>	LLP may be wound up <b>voluntarily</b> or by Tribunal and subsequently dissolved.
64	<b>Circumstances for Tribunal-led Winding Up</b>	LLP can be wound up by Tribunal if:- <ol style="list-style-type: none"> <li>1. LLP decides so.</li> <li>2. Partners are less than two for more than six months.</li> <li>3. LLP acts against sovereignty, security, or public order.</li> <li>4. Default in filing Statement of Account &amp; Solvency or Annual Returns for five consecutive years.</li> <li>5. Tribunal deems it just and equitable.</li> </ol>
65	<b>Rules for Winding Up and Dissolution</b>	Central Government can make rules for winding up and dissolution of LLPs.

## 9. MISCELLANEOUS

Section	Section TITLE	Details
66	<b>Business Transactions of Partner with LLP</b>	<ul style="list-style-type: none"> <li>● A partner can lend money to or transact with the LLP</li> <li>● Has the same rights and obligations as a non-partner regarding such transactions.</li> </ul>
67	<b>Application of Companies Act to LLPs</b>	<ul style="list-style-type: none"> <li>● Central Government may notify provisions of the Companies Act, 1956 (or 2013) to apply to LLPs with or without modifications.</li> <li>● A copy of every notification proposed to be issued above shall be laid in draft before each House of Parliament, while it is in session, for a total period of 30 days which may be comprised in one session or in two or more successive sessions.</li> </ul>
69	<b>Payment of Additional Fee</b>	<ul style="list-style-type: none"> <li>● Documents/returns can be filed late with additional prescribed fee.</li> <li>● Different fees may apply for various LLP classes or documents/returns.</li> </ul>
70	<b>Enhanced Punishment</b>	<ul style="list-style-type: none"> <li>● For second or subsequent offences, punishment may include imprisonment.</li> <li>● Fine, if applicable, shall be twice the prescribed amount for such offences.</li> </ul>

## 10. DIFFERENCES WITH OTHER FORMS OF ORGANISATION

### Distinction between LLP and Partnership Firm:

S.No	Basis	LLP	Partnership firm
1.	Regulating Act	The Limited Liability Partnership Act, 2008.	The Indian Partnership Act, 1932.
2.	Body corporate	It is a body corporate	It is not a body corporate.
3.	Separate legal entity	It is a legal entity separate from its members.	It is a group of persons with no separate legal entity.

S.No	Basis	LLP	Partnership firm
4.	Creation	It is created by a legal process called registration under the LLP Act, 2008.	It is created by an agreement between the partners.
5.	Registration	Registration is mandatory. LLP can sue and be sued in its own name.	Registration is voluntary. Only the registered partnership firm can sue the third parties.
6.	Perpetual succession	The death, insanity, retirement or insolvency of the partner(s)	The death, insanity, retirement or insolvency of the partner(s)
7.	Legal compliances	Only designated partners are responsible for all the compliances and penalties under this Act.	All partners are responsible for all the compliances and penalties under the Act.
8.	Annual filing documents	LLP is required to file: (i) Annual statement accounts (ii) Statement of solvency (iii) Annual return with the registration of LLP every year.	Partnership firm is not required to file any annual document with the registrar of firms.
9.	Foreign partnership	Foreign nationals can become a partner in a LLP	Foreign become nationals a cannot partner in partnership firm.
10.	Minor as partner	Minor cannot be admitted to the benefits of LLP.	Minor can be admitted to the benefits of the partnership with the prior consent of the existing partners.
11.	Mutual agency	Each partner can bind the LLP by his own acts but not the other partners.	Each partner can bind the firm as well as other partners by his own acts

S.No	Basis	LLP	Partnership firm
12.	Designated partners	At least two designated partners and atleast one of them shall be resident in India.	There is no provision for such partners under the Partnership Act, 1932.
13.	Common seal	It may have its common seal as its official signatures.	There is no such concept in partnership.

#### Distinction between LLP and LLC:

S.No	Basis	LLP	Limited Liability Company
1.	Regulating Act	The LLP Act, 2008	The Companies Act, 2013
2.	Members / Partners	The persons who contribute to LLP are known as partners of the LLP.	The persons who invest the money in the shares are known as members of the company
3.	Internal governance structure	The internal governance structure of an LLP is governed by contract agreement between the partners.	The internal governance structure of a company is regulated by statute (i.e., Companies Act, 2013).
4.	Name	Name of the LLP to contain the word "Limited Liability partnership" or "LLP" as suffix.	Name of the public company to contain the word "limited" and Pvt. Co. to contain the word "Private limited" as suffix.
5.	No. Of members/ partners	Minimum - 2 partners Maximum No such limit on the partners in the Act. The partners of the LLP can be individuals/or body corporate through the nominees.	Private company: Minimum - 2 members Maximum 200 members Public company: Minimum - 7 members Maximum No such limit on the members. Members can be organizations, trusts, another business form or individuals.

S.No	Basis	LLP	Limited Liability Company
6.	Liability of members/ partners	Liability of a partners is limited to the extent of agreed contribution except in case of willful fraud.	Liability of a member is limited to the amount unpaid on the shares held by them.
7.	Management	The business of the company is managed by the partners including the designated partners authorized in the agreement.	The affairs of the company are managed by board of directors elected by the shareholders.
8.	Minimum number of directors/designated partners	Minimum 2 designated partners.	Pvt. Co. - 2 directors Public co. - 3 directors

- Which of the following cannot be converted into LLP?
  - Partnership firm
  - Private company
  - Listed company
  - Unlisted company
- The approved name of LLP shall be valid for a period of from the date of approval:
  - 1 Month
  - 2 Months
  - 3 months
  - 6 months
- The name of the Limited Liability Partnership shall end with:
  - Limited
  - Limited Liability Partnership or LLP
  - Private Limited
  - OPC
- Which one of the following statements about limited liability partnerships (LLPs) is incorrect?
  - An LLP has a legal personality separate from that of its members.
  - The liability of each partner in an LLP is limited.
  - Members of an LLP are taxed as partners.
  - A listed company can convert to an LLP.
- For the purpose of LLP, a Resident in India means:
  - A person who has stayed in India for a period of not less than 182 days during the current year.
  - Person who has stayed in India for a period of not less than 180 days during the immediately preceding one year.
  - Person who has stayed in India for a period of not less than 181 days during the immediately preceding one year.
  - A person who has stayed in India for a period of not less than 120 days during the financial year.

6. LLP shall have at least Partners.
  - a. 2
  - b. 4
  - c. 3
  - d. 5
7. The maximum no. of Persons in an LLP is —
  - a. 50
  - b. 100
  - c. 20
  - d. No limit
8. Duration of LLP —
  - a. Is Limited
  - b. Depends on the Partnership Agreement
  - c. Extends up to proper dissolution (perpetual succession)
  - d. None of the above
9. The LLP is responsible for doing all acts, matters, and things as are required to be done by the LLP as per the Act.
  - a. Designated Partner
  - b. Active Partner
  - c. Designated Director
  - d. All the Partners
10. Which of the following enjoys separate legal entity status?
  - a. Partnership Firm
  - b. LLP
  - c. Company
  - d. Both (b) and (c)

## Problem Kya Hai? Question Bank

### ICAI Module Descriptive Questions

#### Section 5 Partners

1. Mr. Ankit Sharma wants to form a LLP taking him, his wife Mrs. Archika Sharma and One HUF as partners for that. Whether this LLP can be incorporated under LLP Act, 2008? Explain.

**Solution:**

Section 5 of Limited Liability Partnership Act, 2008 provides any individual or body corporate may be a partner in an LLP. However, an individual shall not be capable of becoming a partner of a LLP, if—

- (a) he has been found to be of unsound mind by a Court of competent jurisdiction and the finding is in force;
- (b) he is an undischarged insolvent; or
- (c) he has applied to be adjudicated as an insolvent and his application is pending.

Further, Section (2)(1)(d) provides that a Body Corporate it means a company as defined in 'clause (20) of section 2 of the Companies Act, 2013 and includes—

- (i) an LLP registered under this Act;
- (ii) an LLP incorporated outside India; and
- (iii) a company incorporated outside India, but does not include—
  - (i) a corporation sole;
  - (ii) a co-operative society registered under any law for the time being in force; and
  - (iii) any other body corporate (not being a company as defined in 'clause (20) of section 2 of the Companies Act, 2013' or a limited liability partnership as defined in this Act), which the Central Government may, by notification in the Official Gazette, specify in this behalf.

Therefore, HUF is not covered in the definition of body corporate and cannot be partner in LLP.

#### Section 7 Designated Partners

2. There is an LLP by the name Ram Infra Development LLP which has 4 partners namely Mr. Rahul, Mr. Raheem, Mr. Kartar and Mr. Albert. Mr. Rahul and Mr. Albert are non – resident while other two are resident. LLP wants to take Mr. Rahul and Mr. Raheem as Designated Partner. Explain in the light of Limited Liability Partnership Act, 2008 whether LLP can do so?

**Solution:**

According to Section 7 of LLP Act, 2008 every LLP shall have at least two designated partners who are individuals and at least one of them shall be a resident in India. Further, explanation to the section provides, the term "resident in India" means a person who has stayed in India for a period of not less than one hundred twenty days during the financial year. Hence, in the given problem, besides Mr. Rahul and Mr. Raheem, Mr. Albert should also be designated partners.

**Section 15 Name of LLP**

3. M/s Vardhman Steels LLP was incorporated on 01.09.2022. On 01.01.2023, one partner of a partnership firm named M/s Vardhimaan Steels is registered with Indian Partnership Act, 1932 since 01.01.2000 requested ROC that as the name of LLP is nearly resembles with the name of already registered partnership firm, the name of LLP should be changed. Explain whether M/s Vardhman Steels LLP is liable to change its name under the provisions of Limited Liability Act, 2008?

**Solution :**

Section 15 of LLP Act, 2008 provides no LLP shall be registered by a name which, in the opinion of the Central Government is—

- (i) undesirable; or
- (ii) identical or too nearly resembles to that of any other 'LLP or a company or a registered trade mark of any other person under the Trade Marks Act, 1999'.

Further, section 17 provides, if the name of LLP is identical with or too nearly resembles to-

- (i) that of any other LLP or a company; or
- (ii) a registered trade mark of a proprietor under the Trade Marks Act, 1999

then on an application of such LLP or proprietor referred to in clauses (a) and (b) respectively or a company, the CG may direct that such LLP to change its name within a period of 3 months from the date of issue of such direction.

Following the above provisions, LLP need not change its name if its name resembles with the name of a partnership firm. These provisions are applicable only in case where name is resembles with LLP, company or a registered trade mark of a proprietor.

Hence, M/s Vardhman Steels LLP need not change its name even it resembles with the name of partnership firm.

**Section 24 Cessation of Partnership Interest**

4. Kanik, Priyansh, Abhinav and Bhawna were partners in Singh Jain & Associates LLP. Abhinav resigned from the firm w.e.f. 01.11.2022 but this was not informed to ROC by LLP or Abhinav. Whether Abhinav will still be liable for the loss of firm of the transactions entered after 01.11.2022?

**Solution:**

According to section 24(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—

- (i) the person has notice that the former partner has ceased to be a partner of the LLP; or
- (ii) notice that the former partner has ceased to be a partner of the LLP has been delivered to the Registrar.

Hence, by virtue of the above provisions, as no notice of resignation was given to ROC, Abhinav will still be liable for the loss of firm of the transactions entered after 01.11.2022.

### Section 26 Partner as Agent

5. “LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership”. Explain.

**Solution:**

LLP is an alternative corporate business form that gives the benefits of limited liability of a company and 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 and enterprises providing services of any kind or engaged in scientific and technical disciplines, to form commercially efficient vehicles suited to their requirements. Owing to flexibility in its structure and operation, the LLP is a suitable vehicle for small enterprises and for investment by venture capital.

### Section 26

6. Mr. Mudit is the creditor of Devi Ram Food Circle LLP. He has a claim of ₹10,00,000 against the LLP but the worth of the assets of LLP are only ₹7,00,000. Now Mr. Mudit wants to make the partners of LLP personally liable for the deficiency of ₹3,00,000. Whether by virtue of provisions of Limited Liability Act, 2008, Mr. Mudit can claim the deficiency from the partners of Devi Ram Food Circle LLP?

**Solution:**

A limited liability partnership is a body corporate formed and incorporated under this Act and is a legal entity separate from that of its partners. The LLP itself will be liable for the full extent of its assets but the liability of the partners will be limited. Creditors of LLP shall be the creditors of LLP alone. In other words, creditors of LLP cannot claim from partners. The liability of the partners will be limited to their agreed contribution in the LLP. Hence the creditors of Devi Ram Food Circle LLP are the creditors of Devi Ram Food Circle LLP only. Partners of LLP are not personally liable towards creditors. Mr. Mudit can not claim his deficiency of ₹ 3,00,000 from the partners of Devi Ram Food Circle LLP.

## RTP, MTP and PYQ Descriptive Questions

### Section 2(1)(d) Body Corporate

1. Define the term 'Body Corporate' as per the provisions of the Limited Liability Partnership Act, 2008.

**(MTP Sep 24)**

**Solution :**

**Body Corporate:** According to section 2(1)(d) of the Limited Liability Partnership Act, 2008, body corporate means a company as defined in section 2(20) of the Companies Act, 2013 and includes:

- (i) a LLP registered under the Limited Liability Partnership Act, 2008;
- (ii) a LLP incorporated outside India; and
- (iii) a company incorporated outside India, but does not include—
  - (a) a corporation sole;
  - (b) a co-operative society registered under any law for the time being in force; and
  - (c) any other body corporate (not being a company as defined in section 2(20) of the Companies Act, 2013 or a limited liability partnership as defined in the Limited Liability Partnership Act, 2008), which the Central Government may, by notification in the Official Gazette, specify in this behalf.

### Section 2(1)(l) Financial Year

2. Define the term 'Financial Year' as per the provisions of the Limited Liability Partnership Act, 2008.

**(MTP Jan 25)**

**Solution:**

**Financial Year:** According to section 2(1)(l) of the Limited Liability Partnership Act, 2008, "Financial year", in relation to a Limited Liability Partnership (LLP), means the period from the 1st day of April of a year to the 31st day of March of the following year.

However, in the case of a LLP incorporated after the 30th day of September of a year, the financial year may end on the 31st day of March of the year next following that year.

### Section 2(1)(ta) Small Limited Liability Partnership

3. Define the term 'Small limited liability partnership' as per the provisions of the Limited Liability Partnership Act, 2008.

**(MTP Jan 25)**

**Solution :**

Small limited liability partnership

According to section 2(1)(ta) of the Limited Liability Partnership Act, 2008, small limited liability partnership means a limited liability partnership:

- (i) the contribution of which, does not exceed 25 lakh rupees or such higher amount, not exceeding 5 crore rupees, as may be prescribed; and
- (ii) the turnover of which, as per the Statement of Accounts and Solvency for the immediately preceding financial year, does not exceed 40 lakh rupees or such higher amount, not exceeding 50 crore rupees, as may be prescribed; or
- (iii) which meets such other requirements as may be prescribed, and fulfils such terms and conditions as may be prescribed.

**Section 2(1)(ta)**

4. JEET LLP is a small scale consulting firm. For the financial year 2024- 25, the firm reported a total contribution of ₹ 20 lakh and an annual turnover of ₹ 35 lakh as per its Statement of Accounts and Solvency. The LLP intends to avail benefits granted to small LLPs under the Limited Liability Partnership Act, 2008.

- (i) Based on the given financial details, determine whether JEET LLP qualifies as a "Small LLP" under the LLP Act, 2008.
- (ii) If JEET LLP plans to expand its business and projects and resulting turnover exceeding ₹ 50 crore in the next financial year, determine the legal position as to the nature of the LLP as a "Small LLP".

**(RTP May 25)**

**Solution:****Law:**

- (i) According to section 2(1)(ta) of the LLP Act, 2008, a LLP is classified as a "Small LLP" if:
  - (a) Its contribution does not exceed ₹ 25 lakh (or a higher prescribed amount, up to ₹ 5 crore). Here, contribution of JEET LLP is ₹ 20 lakh, which is within the limit.
  - (b) Its turnover does not exceed ₹ 40 lakh (or a higher prescribed amount, up to ₹ 50 crore). Here turnover of JEET LLP is ₹ 35 lakh, which is within the limit.)

**Conclusion:** Since JEET LLP meets both conditions, it qualifies as a "Small LLP" under the Act.

- (ii) If JEET LLP's turnover exceeds ₹50 crore in the next financial year, it will no longer meet the requirements as a Small LLP and will be subject to full compliance requirements applicable to regular LLPs.

### Section 6 Minimum Number of Partners

5. A dispute among the partners of Limited Liability Partnership (the LLP) jeopardized the stability of the business. Out of two partners, one due to a quarrel, left the LLP. The other partner alone continued the business of the LLP. You are being an expert in law is requested to explain the provisions governing the LLP being operated by a single partner and its winding up by the Tribunal as per the provisions of the Limited Liability Partnership Act, 2008.

(PYQ May 24)

#### Solution:

According to section 6 of the Limited Liability Partnership Act, 2008,

- (i) Every LLP shall have at least two partners.
- (ii) If at any time the number of partners of a LLP is reduced below two and the LLP carries on business for more than six months while the number is so reduced, the person, who is the only partner of the LLP during the time that it so carries on business after those six months and has the knowledge of the fact that it is carrying on business with him alone, shall be liable personally for the obligations of the LLP incurred during that period.

In the given situation, the alone partner should consider the above provisions of the Limited Liability Partnership Act, 2008, governing the LLP being operated by a single partner.

As per section 64 of the Limited Liability Partnership Act, 2008, the circumstances in which LLP may be wound up by Tribunal are:

- (a) if the LLP decides that LLP be wound up by the Tribunal;
- (b) if, for a period of more than 6 months, the number of partners of the LLP is reduced below two;
- (c) if the LLP has acted against the interests of the sovereignty and integrity of India, the security of the state or public order;
- (d) if the LLP has made a default in filling with the Registrar the Statement of Account and Solvency or annual return for any 5 consecutive financial years; or
- (e) if the Tribunal is of the opinion that it is just and equitable that the LLP be wound up.

### Section 7 Designated Partners

6. Mr. Prateek (an individual) has started a Limited Liability Partnership firm along with Brown Limited and Picture Limited. As per the provisions of the Limited Liability Partnership Act, 2008, advise Limited Liability Partnership firm, about who can be the designated partners of the firm.

(MTP May 24)

#### Solution:

**Law:** According to section 7 of the Limited Liability Partnership Act, 2008, every Limited Liability Partnership (LLP) shall have at least two designated partners who are individuals and at least one of them shall be a resident in India.

Provided, if in LLP, all the partners are bodies corporate or in which one or more partners are individuals and bodies corporate, at least two individuals who are partners of such LLP or nominees of such bodies corporate shall act as designated partners.

**Conclusion:** In the given question, at least Mr. Prateek and one nominee of any bodies corporate shall be designated partners.

### Section 7

7. Mohan and Rakul are college friends and intend to do trading in musical instruments. They have met Mr. John and Ms. Kate who are non-resident Indian and they all have decided to form a Limited Liability Partnership (LLP) under the name and style of Mohan John LLP with an initial capital contribution of ₹ 1,00,000 each. The LLP was incorporated on October 15, 2020. The LLP intends to appoint Mr. John and Ms. Kate as designated partners and consults same with its Company Secretary. You as the Company Secretary advise the LLP on the appointment of Mr. John and Ms. Kate as the only designated partners of the LLP.

**(MTP May 24)**

#### **Solution:**

**Law:** According to section 7 of the Limited Liability Partnership Act, 2008, every Limited Liability Partnership shall have at least two designated partners who are individuals and at least one of them shall be a resident in India.

**Conclusion:** In the given case, Mohan John LLP intends to appoint Mr. John and Ms. Kate (both are non- resident Indians) as the only designated partners. This is not in consonance with provisions of the Limited Liability Partnership Act, 2008, as at least one of the designated partners should be a resident in India.

### Section 7

8. Analyzing the role and liabilities of Designated Partners in a Limited Liability Partnership (LLP) under the LLP Act, 2008, answer the following questions:
- (i) In a LLP where all partners are corporate entities, can a corporate body be appointed as a designated partner?
  - (ii) If an LLP agreement does not specify the designated partners, whether LLP can be validly formed without designated partners under the LLP Act, 2008?
  - (iii) A designated partner of an LLP in India is planning to relocate permanently to another country.
  - (iv) XYZ LLP was penalized for non-compliance, but one of the designated partners claims he was unaware of the regulatory requirements. Can he avoid liability?

**(MTP May 25)**

**Solution:**

**Law:** The LLP Act, 2008, under Sections 7 and 8, outlines the eligibility, responsibilities, and liabilities of Designated Partners (DPs). Following are the answers:

- (i) Every LLP must have at least two designated partners, and at least one must be a resident of India. Where if, all partners are bodies corporate, at least two individuals must be appointed as designated partners. Therefore, as per the stated law a corporate body cannot be appointed as a designated partner. Only individuals are eligible to be appointed as DPs.
- (ii) The incorporation document must specify the designated partners, or they must be appointed per the LLP agreement. Accordingly, if an LLP agreement does not specify the designated partners, they the partners specified in the incorporation document containing designated partners can validly form the LLP in compliance with the LLP Act, 2008.
- (iii) As per the LLP Act, 2008, at least one designated partner of the LLP must be a resident of India. A resident of India is defined as a person who has stayed in India for at least 120 days in the financial year. If the designated partner is permanently relocating, he may no longer require to fulfill the residency criteria of staying in India for at least 120 days in the financial year.
- (iv) Designated partners are responsible for ensuring that the LLP complies with the LLP Act, 2008.
  - If the LLP fails to comply with statutory requirements, designated partners are held personally liable for penalties.
  - They may face fines or legal consequences for any violations of the LLP Act.

**Conclusion:** Where if, the designated partners, claims he was unaware of the regulatory requirements. He cannot take plead of the ignorance and cannot avoid the liability.

**Section 13 Registered Office of LLP and Change Therein**

9. XYZ LLP was incorporated on 15th March, 2023, with its registered office in Mumbai. The LLP received a legal notice from a supplier at this address.

However, the partners claim they never received the notice, as they had shifted their office to Pune on 10th January, 2024, but had not informed the Registrar about the change.

Based on the provisions of the provisions of the Limited Liability Partnership (LLP) Act, 2008, advise whether the service of notice at the Mumbai address is legally valid.

**(MTP May 25)**

**Solution:**

**Law:** Registered Office of LLP and Change therein

As per section 13 of the Limited Liability Partnership Act, 2013,

- (i) Every LLP shall have a registered office to which all communications and notices may be addressed and where they shall be received.
- (ii) A document may be served on a LLP or 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 and any other address specifically declared by the LLP for the purpose in such form and manner as may be prescribed.
- (iii) A LLP may change the place of its registered office and file the notice of such change with the Registrar in such form and manner and subject to such conditions as may be prescribed and any such change shall take effect only upon such filing.

**Conclusion:** In the given question, the registered office of XYZ LLP is at Mumbai. Further, the question informs that the LLP has shifted their office to Pune.

In the light of the provisions of the Act and the facts of question, the registered office of XYZ LLP will be Mumbai as it is registered with the Registrar. The changed office to Pune cannot be treated as a registered office.

Thus, the service of notice at the Mumbai address is legally valid.

### Section 15 Name of LLP

10. M/s Sulbha LLP was incorporated on 01.09.2022. On 01.01.2023, one partner of a partnership firm named M/s Sulbha which is registered with Indian Partnership Act, 1932 since 01.01.2000 requested ROC that as the name of LLP nearly resembles with the name of already registered partnership firm, the name of LLP should be changed. Explain whether M/s Sulbha LLP is liable to change its name under the provisions of Limited Liability Act, 2008?

**(MTP Sep 24)**

#### **Solution:**

**Law:** Section 15 of Limited Liability Partnership Act, 2008 provides no LLP shall be registered by a name which, in the opinion of the Central Government is—

- (i) undesirable; or
- (ii) identical or too nearly resembles to that of any other 'LLP or a company or a registered trade mark of any other person under the Trade Marks Act, 1999'.

Further, section 17 provides, if the name of LLP is identical with or too nearly resembles to-

- (i) that of any other LLP or a company; or
- (ii) a registered trade mark of a proprietor under the Trade Marks Act, 1999

then on an application of such LLP or proprietor referred to in clauses (a) and (b) respectively or a company, the CG may direct that such LLP to change its name within a period of 3 months from the date of issue of such direction.

**Conclusion:** Following the above provisions, LLP need not change its name if its name resembles with the name of a partnership firm. These provisions are applicable only in case where name is resembles with LLP, company or a registered trade mark of a proprietor.

Hence, M/s Sulbha LLP need not change its name even it resembles with the name of the partnership firm.

### Section 17 Rectification of Name of LLP

11. XYZ LLP was registered under the Limited Liability Partnership Act, 2008 (LLP Act) with a name that was later found to be identical to an existing company's name, XYZ OPC Pvt Ltd. This similarity was not noticed at the time of registration.

Explain the provisions of the Limited Liability Partnership Act, 2008, in respect of the following:

- (i) When the name of LLP is identical.
- (ii) Formalities with the Registrar of Companies after name change of LLP.

**(RTP Sep 24)**

#### **Solution:**

**Law:** According to section 17 of the LLP Act, 2008,

- (i) Notwithstanding anything contained in sections 15 and 16, if through inadvertence, or otherwise, the LLP, on its first registration or on its registration by new name, is registered by a name which is identical with or too nearly resembles to-

that of any other LLP or a company; or

a registered trade mark of a proprietor under the Trade Marks Act, 1999

as likely to be mistaken, then on an application of such LLP or proprietor referred to in clauses (a) and (b) respectively or a company, the Central Government may direct such LLP to change its name or new name within a period of 3 months from the date of issue of such direction,

Provided that an application of the proprietor of the registered trademarks shall be maintainable within a period of 3 years from the date of incorporation or registration or change of name of the LLP under this Act.

#### **Conclusion:**

- (ii) Where an LLP changes its name or obtains new name, it shall within a period of 15 days from the date of such change, give notice of the change to Registrar along with the order of the Central Government, who shall carry out necessary changes in the certificate of incorporation and within 30 days of such change in the certificate of incorporation, such LLP shall change its name in the LLP agreement.

### Section 24 Cessation of Partnership Interest

12. Kishore, Kanshik, Yuvan and Bhora were partners in ABC & Associates LLP. Yuvan resigned from the firm effective from 11th November, 2024 but this was not informed to the Registrar of Companies by the Limited Liability Partnership or Yuvan. Whether Yuvan will still be liable for the loss of firm of the transactions entered after 11th November, 2024? Give your answer as per the provisions of the Limited Liability Partnership Act, 2008.

(MTP Jan 25)

#### Solution:

**Law:** According to section 24(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:

- (i) the person has notice that the former partner has ceased to be a partner of the LLP; or
- (ii) notice that the former partner has ceased to be a partner of the LLP has been delivered to the Registrar.

**Conclusion:** Hence, by virtue of the above provisions, as no notice of resignation was given to ROC, Yuvan will still be liable for the loss of firm of the transactions entered after 11th November, 2024.

### Section 24

13. Priya, Smita, Shilpa, and Shefali were partners in Sharma & Associates LLP. Shilpa resigned from the firm effective 7th May 2024. However, neither Sharma & Associates LLP nor Shilpa informed the Registrar of Companies about her resignation. Is Shilpa still liable for any losses incurred by the firm from transactions entered into after 7th May 2024? Analyze this situation with reference to the provisions of the Limited Liability Partnership Act, 2008.

(MTP Sep 24)

#### Solution:

**Law:** According to section 24(3) of the Limited Liability Partnership Act, 2008, 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:

- (a) the person has notice that the former partner has ceased to be a partner of the LLP; or
- (b) notice that the former partner has ceased to be a partner of the LLP has been delivered to the Registrar.

**Conclusion:** Hence, by virtue of the above provisions, as no notice of resignation was given to Registrar of Companies, Shilpa will still be liable for the loss of firm of the transactions entered after 7th May 2024.

### Section 25 Registration of changes in partners

14. Amit and Priya are partners in XYZ LLP, a consulting firm. Recently, Priya moved to a new address but forgot to notify the LLP within the required period. A month later, Amit's cousin, Ramesh, expressed interest in joining XYZ LLP as a partner, and after a few discussions, he was accepted as a new partner.

However, XYZ LLP did not immediately update the Registrar of Companies (RoC) regarding Priya's address change or Ramesh's admission as a partner. Two months after Ramesh joined, the LLP filed a notice with the RoC about these changes.

Advise the LLP about the default on part of LLP about the non compliance in respect to not informing the ROC about:

- (i) Priya's address change
- (ii) Ramesh's admission as a partner.

**(RTP Jan 25)**

#### **Solution :**

**Law:** According to section 25 of the Limited Liability Partnership Act, 2008,

- (i) Every partner shall inform the LLP of any change in his name or address within a period of 15 days of such change.
- (ii) 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.
- (iii) A notice filed with the Registrar under sub-section (2)—
  - (a) shall be in such form and accompanied by such fees as may be prescribed;
  - (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 and authenticated in the manner as may be prescribed.

#### **Conclusion:**

- (i) **Priya's Address Change:** Under the provision, Priya was required to inform XYZ LLP of her address change within 15 days of the move.

Following that, XYZ LLP was required to file a notice with the RoC within 30 days of being notified of Priya's new address. As Priya did not inform the LLP about change of address and consequently LLP did not file a notice regarding the change in address of Priya with the Registrar, XYZ LLP is not in compliance with the required timeline.

- (ii) Ramesh's Admission as a Partner: For new partners, XYZ LLP must file a notice with the RoC within 30 days of a person becoming a partner. This notice should include Ramesh's consent statement, signed by him and authenticated as prescribed. The delay in filing means XYZ LLP did not meet the 30-day requirement.

### Section 26 Partner as Agent

15. "LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership". Explain.

(MTP May 24)

#### Solution:

Limited Liability Partnership (LLP) is an alternative corporate business form that gives the benefits of limited liability of a company and 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 and enterprises providing services of any kind or engaged in scientific and technical disciplines, to form commercially efficient vehicles suited to their requirements. Owing to flexibility in its structure and operation, the LLP is a suitable vehicle for small enterprises and for investment by venture capital.

### Section 26

16. Mohit is a creditor of ABC LLP. He has a claim of ₹ 10,00,000 against the LLP. However, the assets of the LLP are valued at only ₹ 7,00,000. Now, Mohit seeks to hold the partners of the LLP personally accountable for the shortfall of ₹ 3,00,000. Under the provisions of the Limited Liability Act, 2008, can Mohit demand for the deficit from the partners of ABC LLP?

(RTP May 24)

#### Solution:

**Law:** A limited liability partnership is a body corporate formed and incorporated under the Limited Liability Partnership Act, 2008 and is a legal entity separate from that of its partners. The LLP itself will be liable for the full extent of its assets but the liability of the partners will be limited. Creditors of LLP shall be the creditors of LLP alone. In other words, creditors of LLP cannot claim from partners. The liability of the partners will be limited to their agreed contribution in the LLP.

**Conclusion:** Hence, the creditors of ABC LLP are the creditors of ABC LLP only. Partners of LLP are not personally liable towards creditors. Thus, Mohit cannot claim his deficiency of ₹ 3,00,000 from the partners of ABC LLP.

**Section 31 Whistle Blowing**

17. NS & Associates LLP was formed in the year 2020 and it was engaged in the business of manufacturing of plastic parts for automobiles. It constituted of Mr. Naveen and Mr. Suresh as designated partners who were responsible for obtaining contracts from various automobile manufacturers across the country for supply of spare parts for vehicles.

In the year 2021 an investigation was ordered by the Tribunal against the LLP in connection with a financial fraud worth ₹ 50,25,000. Mr. J one the Accounts Manager and employee of the LLP was accused by the complainant, as one of the perpetrators to the fraud.

The Tribunal levied a penalty of ₹ 1,25,000 to be paid by Mr. J on his conviction. Mr. J approached the Tribunal and provided vital information about the other black sheep involved in the fraud thus aiding in the investigation process. The Tribunal is considering of providing some relief in the penal action taken against him, while the LLP is planning to suspend Mr. J from service for this act.

Considering the provisions of Limited Liability Partnership Act, 2008:

- (i) Decide whether the Tribunal can waive off or reduce the penalty imposed by it on Mr. J?
- (ii) Can the LLP suspend Mr. J from service for commission of the act, of revealing the name of the other accused involved in the fraud?

**(PYQ Jan 2025)**

**Solution:**

Law: Section 31 of the Limited Liability Partnership Act, 2008 provides that:

The Court or Tribunal may reduce or waive any penalty leviable against any partner or employee of a LLP, if it is satisfied that:

- such partner or employee of an LLP has provided useful information during investigation of such LLP; or when any information given by any partner

or

- when any information given by any partner or employee (whether or not during investigation) leads to LLP or any partner or employee of such LLP being convicted under this Act or any other Act.

Conclusion: On the basis of the above provisions, the question can be answered as under:

- (i) Whether the Tribunal can waive off or reduce the penalty imposed by it on Mr. J?

Yes, the Tribunal has the power to waive or reduce the penalty of ₹ 1,25,000 being imposed on Mr. J as he has provided useful information that is helpful towards investigations in the case of fraud by the LLP.

- (ii) Can the LLP suspend Mr. J?

Section 31(2) of the LLP Act, 2008 further provides that:

No partner or employee of any limited liability partnership may be discharged, demoted, suspended, threatened, harassed or in any other manner discriminated against the terms and conditions of his limited liability partnership or employment merely because of his providing information or causing information to be provided pursuant to sub-section (1). Hence, Mr. J cannot be suspended from the job by the LLP on the grounds of having provided vital information regarding the fraud to the Tribunal.

### Section 42 Partner's Transferable Interest

18. A, B, C and D are the partners of Alpha LLP and have equal share in the profits and losses of the LLP. A has made an agreement to transfer 70% of his share in the profits of Alpha LLP to his daughter X.

X wanted to access information about the trading transactions of Alpha LLP claiming that she is entitled to the information as she receives a percentage of profits from the LLP. The partners refused to grant her access. Does X have any remedy against the denial according to the provisions of the Limited Liability Partnership Act, 2008? Are the partners correct in denying access to X?

(PYQ Sep 24)

#### Solution:

**Law:** According to section 42 of the Limited Liability Partnership Act, 2008, the rights of a partner to a share of the profits and losses of the limited liability partnership and to receive distributions in accordance with the limited liability partnership agreement are transferable either wholly or in part.

The transfer of right pursuant to this section does not, by itself, entitle the transferee or assignee to participate in the management or conduct of the activities of the limited liability partnership, or access information concerning the transactions of the limited liability partnership.

**Conclusion:** In the given question, the partners of Alpha LLP are correct in denying access of information about trading transactions to X (daughter of A).

X does not have any remedy against the denial by the partners of Alpha LLP.

### Section 63 Winding up and Dissolution

19. M/s Strong Steels Limited Liability Partnership firm was incorporated on 01st April 2010 with ten partners. The LLP had very good business and made considerable profits during the past years. Recently due to obsolete practices, M/s Strong Steels Limited LLP started making loss. Also, M/s Strong Steels LLP did not file its annual returns from 2020-21. Three partners decided that the LLP be wound up by the Tribunal. The remaining partners objected to it. Referring to section 64 of the Limited Liability Partnership Act, 2008, can the Tribunal pass an order to wound up M/s Strong Steels LLP? Also state the provisions and penalty for not filling annual return with the Registrar.

(PYQ Sep 24)

**Solution:**

**Law:** According to section 63 of the Limited Liability Partnership Act, 2008, the winding up of a LLP may be either voluntary or by the Tribunal and LLP, so wound up, may be dissolved.

As per section 64 of the Limited Liability Partnership Act, 2008, a LLP may be wound up by the Tribunal, if the LLP has made a default in filing with the Registrar the Statement of Account and Solvency or Annual Return for any 5 consecutive financial years.

Annual Return [Section 35]

(a) Every LLP shall file an annual return duly authenticated with the Registrar within 60 days of closure of its financial year in such form and manner and accompanied by such fee as may be prescribed.

(b) Penalty for non-filing of annual return:

Every Designated Partners– ₹100 per day subject to maximum ₹ 50,000.

**Conclusion:** In the present case, M/s Strong Steels LLP did not file its Annual Returns from 2020-21. In the financial year 2024-25, the default in filing of annual return has not continued for 5 consecutive years. In view of the facts of the question and provisions of the Act, the Tribunal cannot pass an order to wind up M/s Strong Steels LLP.

The objection of remaining partners is correct.

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

20. Enumerate the circumstances in which a Limited Liability Partnership may be wound up by the Tribunal. Give your answer in respect of the provisions of the Limited Liability Partnership Act, 2008.

**(MTP May 24)**

**Solution:**

Circumstances in which LLP may be wound up by Tribunal [Section 64 of the Limited Liability Partnership Act, 2008]

A LLP may be wound up by the Tribunal:

- (i) if the LLP decides that LLP be wound up by the Tribunal;
- (ii) if, for a period of more than six months, the number of partners of the LLP is reduced below two;
- (iii) if the LLP has acted against the interests of the sovereignty and integrity of India, the security of the State or public order;
- (iv) 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
- (v) if the Tribunal is of the opinion that it is just and equitable that the LLP be wound up.

**Section 64 Circumstances in which LLP May be Wound up by Tribunal**

21. State the circumstances under which the winding up of an LLP may be ordered by the Tribunal.

(PYQ Jan 2025)

**Solution:**

Circumstances in which Limited Liability Partnership may be wound up by Tribunal (Section 64 of the Limited Liability Partnership Act, 2008):

A limited liability partnership may be wound up by the Tribunal:

- (i) if the limited liability partnership decides that limited liability partnership be wound up by the Tribunal;
- (ii) if, for a period of more than six months, the number of partners of the limited liability partnership is reduced below two;
- (iii) if the limited liability partnership is unable to pay its debts;
- (iv) if the limited liability partnership has acted against the interests of the sovereignty and integrity of India, the security of the State or public order;
- (v) if the limited liability partnership 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
- (vi) if the Tribunal is of the opinion that it is just and equitable that the limited liability partnership be wound up.