

CHAPTER 7

THE LIMITED LIABILITY PARTNERSHIP ACT, 2008

**INTRODUCTION**

The Ministry of Law and Justice on 9th January 2007 notified the Limited Liability Partnership Act, 2008.

The Parliament passed the Limited Liability Partnership Bill on 12th December, 2008 and the President of India has assented the Bill on 7th January, 2009 and called as the Limited Liability Partnership Act, 2008.

The LLP Act, 2008 is applicable to the whole of India.

This Act have been enacted to make provisions for the formation and regulation of Limited Liability Partnerships and for matters connected there with or incidental thereto.

The LLP Act, 2008 has 81 sections and 4 schedules.

- The First Schedule deals with mutual rights and duties of partners, as well limited liability partnership and its partners where there is absence of a formal agreement with respect to them.
- The Second Schedule deals with conversion of a firm into LLP.
- The Third Schedule deals with conversion of a private company into LLP.
- The Fourth Schedule deals with conversion of unlisted public company into LLP.

The Ministry of Corporate Affairs and the Registrar of Companies (ROC) are entrusted with the task of administrating the LLP Act, 2008. The Central Government has the authority to frame the Rules with regard to the LLP Act, 2008, and can amend them by notifications in the Official Gazette, from time to time.

It is also to be noted that the Indian Partnership Act, 1932 is not applicable to LLPs.

The Limited Liability Act, 2008 has been amended through the Limited Liability Partnership (Amendment) Act, 2021 dated 13th August, 2021.

Need of new form of Limited Liability Partnership

The lawmakers envisaged the need for bringing out a new legislation for creation of the Limited Liability Partnership to meet with the contemporary growth of the Indian economy.

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. In order to enable professional expertise and entrepreneurial initiative and combine, organize and operate in flexible, innovative and efficient manner, the LLP Act, 2008 was enacted.

Thus, LLP as a form of business organization is an alternative corporate business vehicle. It provides the benefits of limited liability but 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.

LIMITED LIABILITY PARTNERSHIP - MEANING AND CONCEPT

Meaning: 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.

LLP as a separate legal entity and business organisation is an alternative corporate business form that gives the 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.



Important Definitions

♣

Body Corporate [(Section 2(1)(d)]: It means a company as defined in clause (20) of section 2 of the Companies Act, 2013 and includes

- (i) a limited liability partnership registered under this Act;
- (ii) a limited liability partnership 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.

Business [Section 2(1)(e)]: "Business" includes every trade, profession, service and occupation except any activity which the Central Government may, by notification, exclude.

Designated Partner [Section 2(1)(j)]: "Designated partner" means any partner designated as such pursuant to section 7.

Entity [Section 2(1)(k)]: "Entity" means any body corporate and includes, for the purposes of sections 18, 46, 47, 48, 49, 50, 52 and 53, a firm setup under the Indian Partnership Act, 1932.

Financial Year [Section 2(1)(l)]: "Financial year", in relation to a 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.

Example

If a LLP has been incorporated on 15th October, 2019, then financial year maybe from 15th October, 2019 to 31st March, 2021.

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.

Foreign LLP [section 2(1)(m)]: It means a LLP formed, incorporated or registered outside India which establishes a place of business within India.

Limited liability partnership [Section 2(1)(n)]: Limited Liability Partnership means a partnership formed and registered under this Act.

Limited Liability partnership agreement [Section 2(1)(o)]: It means any written agreement between the partners of the LLP or 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.

Partner [Section 2(1)(q)]: Partner, in relation to a LLP, means any person who becomes a partner in the LLP in accordance with the LLP agreement.

Small Limited Liability Partnership [Section 2(1)(ta)]: It means a limited liability partnership—

- (i) the contribution of which, does not exceed twenty-five lakh rupees or such higher amount, not exceeding five 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 forty lakh rupees or such higher amount, not exceeding fifty 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.

Non-applicability of the Indian Partnership Act, 1932 (Section 4): Save as otherwise provided, the provisions of the Indian Partnership Act, 1932 shall not apply to a LLP.

Partners (Section 5): Any individual or body corporate may be a partner in a 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.

Minimum number of partners (Section 6):

- (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.

Designated partners (Section 7):

- (i) Every LLP shall have at least two designated partners who are individuals and at least one of them shall be a resident in India.
- (ii) 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.
- (iii) Resident in India: For the purposes of this section, the term resident in India means a person who has stayed in India for a period of not less than 120 days during the financial year.

Example:

There is an LLP by 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 partner should be out of Ms. C, Ms. D and Ms. E

CHARACTERISTIC OF LLP



LLP is a body corporate: Section 2(1)(d) of the LLP Act, 2008 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 and shall have perpetual succession. Therefore, any change in the partners of a LLP shall not affect the existence, rights or liabilities of the LLP.

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.

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.

Separate Legal Entity: The LLP as 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.

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.

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.

Artificial Legal Person: A LLP is an artificial legal person because it is created by a legal process and is clothed with all 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 divorce nor can it practice 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.

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 designated partners of the LLP.

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. 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 Professionals 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.

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.

Minimum and Maximum number of Partners: Every LLP shall have 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.

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.

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

Compromise or Arrangement: Any compromise or agreements including merger and amalgamation of LLPs shall be in accordance with the provisions of the LLP Act, 2008.

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.

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 and authenticated by a partner or designated partner of LLP by the use of

electronic or digital signature.

Foreign LLPs: Section 2(1)(m) defines foreign limited liability partnership “as a limited liability partnership formed, incorporated, or registered outside India which established as place of business within India”. Foreign LLP can become a partner in an Indian LLP.

Advantages of LLP form- LLP form is a form of business model which:

is organized and operates on the basis of an agreement

provides flexibility without imposing detailed legal and procedural requirements.

Easy to form

All partners enjoy limited liability

Easy to dissolve

INCORPORATION OF LLP

Incorporation document (Section 11): The most important document needed 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 in which the registered office of the LLP is to be situated; and*
- (c) Statement to be filed:*
 - there shall be filed along with the incorporation document, a statement in the prescribed form,*
 - made by either an advocate, or a Company Secretary or a Chartered Accountant or a Cost Accountant, who is engaged in the formation of the LLP and*
 - by any one who subscribed his name to the incorporation document,*
 - that all the requirements of this Act 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 ` 10,000 but which may extend to 5 Lakhs.

Incorporation by registration (Section 12):

- ♣ 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, unless the requirement imposed by clause (a) of that sub-section has not been complied with, 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.

♣ 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.

♣ The certificate issued under clause (b) of sub-section (1) shall be signed by the Registrar and authenticated by his official seal.

♣ The certificate shall be conclusive evidence that the LLP is incorporated by the name specified therein.

Registered office of LLP and change therein (Section 13):

♣ Every LLP shall have a registered office to which all communications and notices may be addressed and where they shall be received.

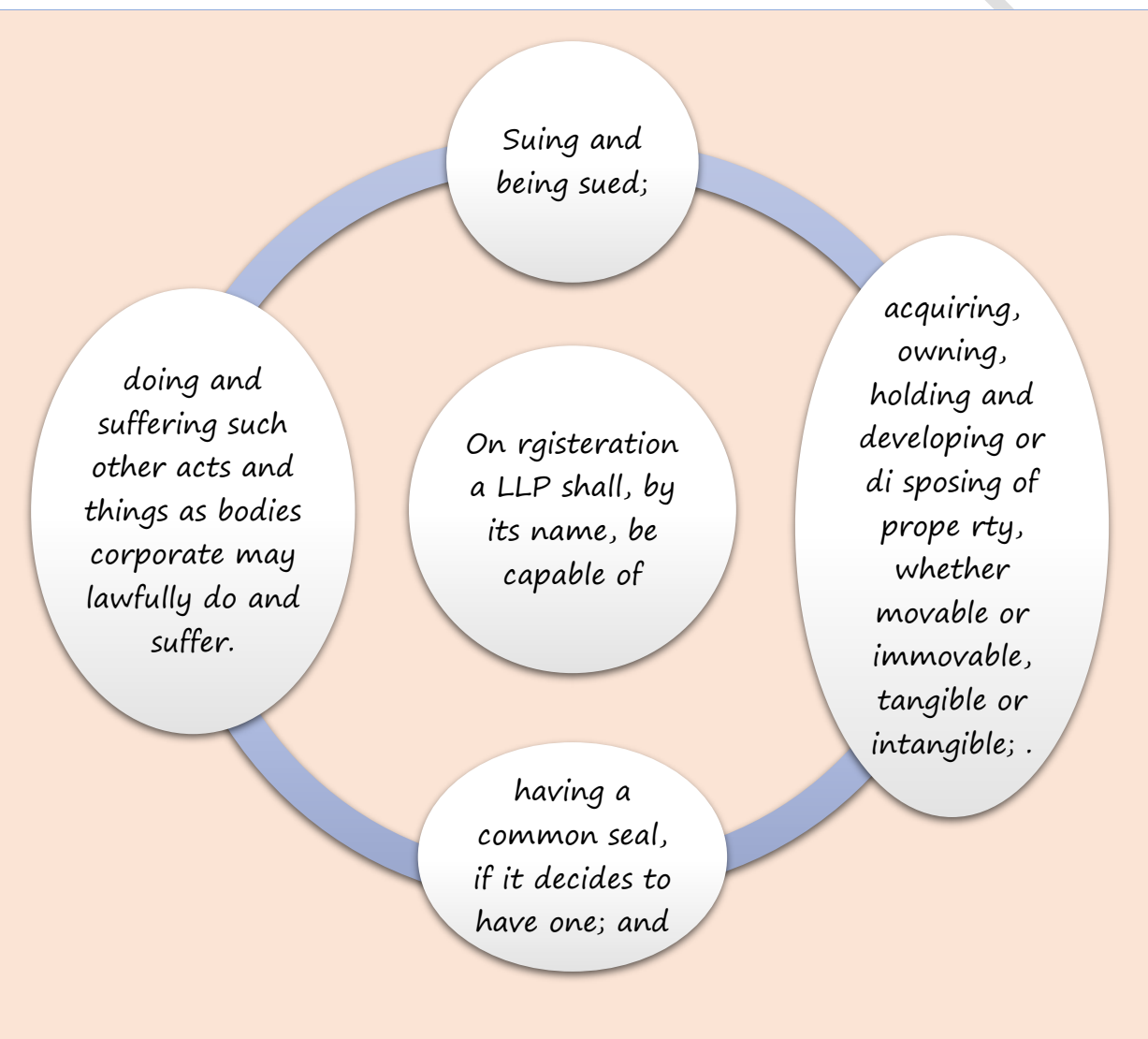
♣ A document may be served on a LLP or a partner or designated partner thereof by sending it by post under a certificate of posting or by registered post or by any other manner, as may be prescribed, at the registered office and any other address specifically declared by the LLP for the purpose in such form and manner as may be prescribed.

♣ 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.

♣ If the LLP contravenes any provisions of this section, the LLP and its every partner shall be liable to a penalty of 500 for each day during which the

default continues, subject to a maximum of 50,000 for the LLP and its every partner.

Effect of registration (Section 14):



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 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.

Reservation of name (Section 16):

♣ A person may apply in such form and manner and accompanied by such fee as may be prescribed to the Registrar 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.

♣ 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):

♣ Notwithstanding anything contained in sections 15 and 16, if through inadvertence or otherwise, 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—

- (a) that of any other LLP or a company; or
- (b) a registered trade mark 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 trade marks 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.

- ♣ 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, 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.

- ♣ 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 sub-section shall prevent a LLP from subsequently changing its name in accordance with the provisions of section 16.

DIFFERENCES WITH OTHER FORMS OF ORGANISATION

Distinction between LLP and Partnership Firm: The points of distinction between a limited liability partnership and partnership firm are tabulated as follows:

Sr.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.
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) does not affect its existence	The death, insanity, retirement or insolvency of the partner(s) may affect

		of LLP. Partners may join or leave but its existence continues forever.	its existence. It has no perpetual succession.
7.	Name	Name of the LLP to contain the word limited liability partnership (LLP) as suffix.	No guidelines. The partners can have any name as per their choice.
8.	Liability	Liability of each partner is limited to the extent to agreed contribution except in case of willful fraud.	Liability of each partner is unlimited. It can be extended upto the personal assets of the partners.
9.	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.
10.	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.
11.	Common seal	It may have its common seal as its official signatures.	There is no such concept in partnership.
12.	Legal compliances	Only designated partners are responsible for all the compliances	All partners are responsible for all the

		and penalties under this Act.	compliances and penalties under the Act.
13.	Annual filing of documents	LLP is required to file: (i) Annual statement of 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.
14.	Foreign partnership	Foreign nationals can become a partner in a LLP.	Foreign nationals cannot become a partner in a partnership firm.
15.	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.

Distinction between LLP and Limited Liability Company

Sr.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	The persons who invest the money in the shares

		known as partners of the LLP.	are known as members of the company.
3.	Internal governance structure	The internal governance structure of a 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.
6.	Liability of members/partners	Liability of a partners is limited to the extent of agreed contribution except	Liability of a member is limited to the amount unpaid on the shares held by them.

		in case of willful fraud.	
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

CA CS Swati Agrawal

SUMMARY CHART

The LLP Act, 2008

Applicability

- From 31st march ,2009 (extend whole of India)

Contents

- 81 sections and 4 schedules
- First Schedule- mutual rights & duties of partners,
- Second Schedule - conversion of a firm into LLP,
- Third Schedule - conversion of a Pvt. Co. into LLP,
- Fourth Schedule- conversion of unlisted public company into LLP.

Non-Applicability

- Non- Applicability of the Indian Partnership Act, 1932 to LLPs.

Meaning and Concept of LLP

- New form of legal business entity with limited liability
- Alternative corporate business vehicle
- Allows the partners the flexibility of organising their internal structure
- LLP itself will be liable for the full extent of its assets
- Liability of the partners will be limited

Important Definitions

Body Corporate [Sec. 2(1)(d)]	A company & includes - LLP, foreign LLP, foreign company, Not include - corporation sole; co-operative society & any other notified by CG.
Business [Sec. 2(1)(e)]	Includes: every trade, profession, service & occupation Excludes: Any activity notified by CG.
Designated Partner [S 2(1)(j)]	Any partner designated as such pursuant to section 7.
Entity [Sec. 2(1)(k)]	Any body corporate & includes a partnership firm for specific purposes.
Foreign LLP [Sec. 2(1)(m)]	LLP formed, incorporated or registered outside India which establishes a place of business within India.
Financial Year [Sec. 2(1)(l)]:	1st April to 31st March. If LLP incorporated september, F.Y. may end on 31st day of March of next following that year. 30th a
LLP agreement [Sec. 2(1)(o)]	Written agreement b/w partners of LLP or between the LLP and its partners.

PARTNERS

Who may be (Sec. 5) :

Any individual or body corporate may be a partner in a LLP. But not, person of unsound mind, undischarged insolvent; or who has applied to be adjudicated as an insolvent.

Minimum partners (Section 6)

- Two partners.
- If LLP carries on business for more than 6 months with only one partner, he shall be liable personally for the obligations of the LLP incurred during that period.

Important Concepts

Small LLP [S.2(ta)]

Contribution upto Rs.25L; &

Turnover immediately preceding upto Rs.40 L

or

which fulfills prescribed terms and conditions.

Designated partners (S.7)

- At least two designated partners who are individuals and at least one of them shall be a resident in India.
- Resident in India: a person who has stayed in India for a period of not less than 120 days during the immediately preceding one year.

Incorporation of LLP

- Subscription of Names by two or more persons,
- Filing of Documents with ROC with prescribed fees.
- Compliance Statement made by advocate/CS/CA/CWA & by any one of subscribers.
- Documents containing - Name, Proposed business, Address of LLP; Name and address of each of to be partners & designated partners; Other prescribed information.
- Issue of Incorporation Certificate by ROC within 14 days

Important Concepts**Name**

- Use of words “limited liability partnership” or “LLP” as the last words of its name.
- No LLP registration by a name which, in the opinion of the CG is—
 - a) undesirable; or
 - b) identical or too nearly resembles to any other partnership firm or LLP or company or a registered trade mark.

Change of Name

if name Registered LLP is identical or too nearly resembles to any other partnership firm or LLP or company or a registered trade mark, CG may direct such LLP to change its name within 3 months. (On Application)

Characteristics

- *Body Corporate*
- *Perpetual Succession*
- *Separate legal entity*
- *Mutual Agency*
- *LLP Agreement*
- *Artificial Legal person*
- *Common Seal*
- *Limited liability*
- *Management of business*
- *Minimum and maximum number of partners*
- *Business for profit only.*
- *Investigation*