

* CH. 3 : LIMITED LIABILITY PARTNERSHIP *

* MEANING

- An LLP is a hybrid between company & partnership firm.
- It is a separate legal entity.
- Every partner would be agent of LLP, but LLP would not be agent of LLP bound to anything done by a partner.
- MCA is the administrative ministry for LLP

* FEATURES

- i] LLP is a body corporate with legal entity and perpetual succession.
- ii] It is applicable to any trade or business
- iii] It is created & registered under LLP, Act, 2008.
- iv] It can be created by 2 partners.
- v] It is administered by Ministry of Corporate Affairs.
- vi] Every partner of LLP is agent of LLP.
- vii] Liability of partner is limited except in case of fraud.

* ADVANTAGES

- i] Easy & less expensive formation.
- ii] No restriction on maximum no. of persons
- iii] Flexibility in management
- iv] less Government intervention.

- vi] Easy to dissolve or wind up.
- vii] No requirement any of minimum capital contribution by partners.
- viii] Low compliance cost.

* Disadvantages :-

i] In LLP, if there is non-compliance such as delay in filing e-form, then it shall pay fee of ₹ 100/- per day up to period of 300 days.

ii] If any LLP defaulted in filings or statements of accounts and annual return and willing to shut down its business, then LLP will have to make default good first with filing fees.

iii] LLP are not allowed to raise external commercial borrowings.

iv] LLPs are small form of business & cannot get its shares listed in any stock exchange.

v] LLP can be structured in such a way that one partner has more rights than another. Hence, there isn't one vote per share.

vi] If any non-resident or foreigner is willing to form LLP in India then it must have one person resident in India and such foreigner can only form LLP where 100% FDI is allowed.

* **SMALL LLP** :- It means LLP of which contribution does not exceed 25 lakh rupees ^{or more} and immediately preceding financial year, does not exceed 40 lakh rupees or more.

* **WHO CAN BE PARTNER IN LLP?**

- Any individual
- Any private company / Public company
- Foreign company
- Any other LLP
- LLP registered outside india.

* **PROCEDURE TO REGISTER A LLP**

1. Obtain directors identification number (DIN) in form DIR-3 with the following documents -
 - Proof of identity
 - Proof of Residence.
2. Register digital signature of designated partners on MCA website.
3. File 'RUN LLP' form → name will reserve for 3 months.
4. File 'fillip' form for incorporation of LLP.
5. LLP agreement is to be filed within 30 days from date of incorporation.

* PROCEDURE FOR CHANGE OF NAME LLP

1. Check name change provision in LLP agreement



2. If there is no provision, then obtain consent of all partners



3. Check name availability on MCA website



4. File Form RUN LLP



5. After approval of name by ROC, it shall be available for adoption for 3 months.



6. File form-5



7. ROC will issue fresh certificate of incorporation in form No.16



8. New name will be effective from date of above certificate



9. File form 3 since there will be change in LLP agreement.

* PROCEDURE FOR SHIFTING THE REGISTERED OFFICE OF LLP.

i] Change of R.O within same state & within jurisdiction at same Registrar.

- Consent of all partners is required
- Consent of secured creditors is not required
- Form 15 to be filed.
- No public notice required
- Time limit for filing within 30 days from passing of resolution.

ii] Change of Registered office within same state from same jurisdiction at one registrar to another registrar

- Consent of all partners is required
- Consent of secured creditors is not required
- Form 15 to be filed
- No public notice required
- Time limit for filing within 30 days from passing of resolution.

iii] Change of registered office from one state to another.

- Consent of all partners is required
- Consent of secured creditors is required.
- Form 15 to be filed
- Give public notice of change of registered office in an English daily newspaper & vernacular daily where registered office is situated.
- Time limit for filing within 30 days from passing of resolution.

* WHAT IS LLP AGREEMENT ?

- It means any written agreement between the partners of LLP or between the LLP & its partners.
- It determines mutual rights & duties of partners.
- It is compulsory to make LLP agreement within 30 days of incorporation of LLP.
- Objective :
 - 1) It defines roles, responsibilities, rights & powers of partners to LLP & to each other.
 - 2) It clarifies managerial, operational as well as administrative responsibilities & sets methodologies for decision making.
 - 3) It defines outlook & gives clear methodology to decision making.
 - 4) Well drafted LLP agreement works like backbone of LLP.

* HOW TO PREPARE LLP AGREEMENT ? -

1) Draft an agreement & print it on stamp paper.

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All partners should sign agreement

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Two witness shall sign agreement on last page

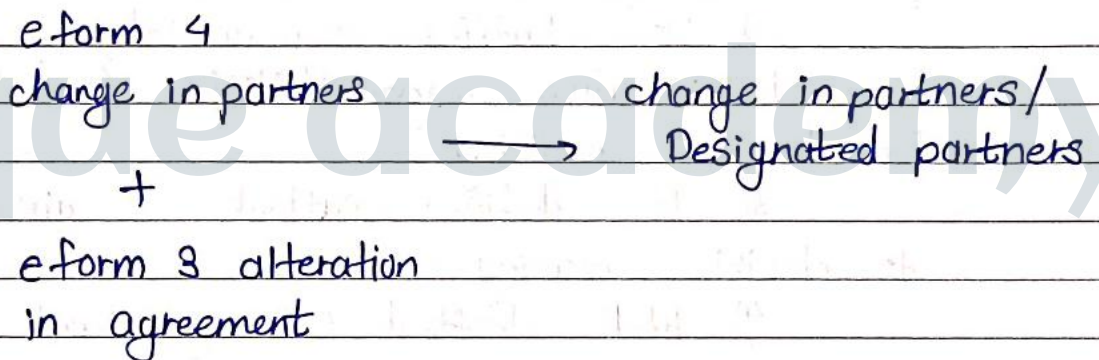
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Each partner shall be provided with copy of an agreement.

* ALTERATION OF LLP AGREEMENT

- Pass a resolution approving the revision of LLP
- file e-form 3 within 30 days of amendment
- Document to be attach with form 3
 - Original LLP agreement
 - Supplementary altered agreement
 - optional attachments.

* PROCEDURE FOR CHANGE IN DESIGNATED PARTNER / PARTNER



- Documents to be attached
 - Consent of partner
 - Evidence of cessation
 - Affidavit proof of change of name.
 - If designated partner or partner, then copy of resolution of company.
 - Copy of resolution / authorization letter mentioning name & address of individual nominated as partner / designated partner.

* ANNUAL COMPLIANCE FOR LLP :-

- Annual Return in form 11 within 60 days of closure of financial year.
- Statement of Accounts & solvency in form 8 within 30 days from end of 6 months of financial year to which such statement of accounts & Solvency relates to.
- Income Tax return in IT return form July 31st of assessment year.
- LLPs whose annual turnover exceeds ₹ 40 lakh or whose contribution exceeds ₹ 25 lakh are required to get their accounts audited by qualified CA mandatorily. Penalty for non-filing forms with ROC is ₹ 100/- per day per form.
- LLP whose annual turnover exceeds ^{₹ 5 Crores} ~~₹ 40 lakh~~ or contribution exceeds ~~₹ 25~~ 50 lakhs, then annual return should be accompanied by Certificate from Practising Company Secretary.
- LLP who is required to get its accounts audited under Income Tax Act → 30th September.
- LLP who is required to furnish report in form No. 8 BCEB → 30th November.

- In any other case → July 31st

* WINDING UP OF LLP

- LLP can be wound up either voluntarily or by Tribunal.

- If LLP is winding up voluntarily, then LLP must pass a resolution to wind up LLP with approval of at least 3/4th of total number of Partners.

- If LLP has lenders, secured or unsecured, then approval of lenders is required for winding up.

- Tribunal can wind up LLP in the following cases -

- 1) If LLP decides that it shall be wound up by tribunal.

- 2) If there are less than two partners for period of more than 6 months, in LLP.

- 3) When LLP has acted against interest of nation or state security or public order.

- 4) If default made in filing of Annual return & statements of accounts & solvency for continuous 5 financial year.

- 5) If Tribunal is of opinion that it is just & equitable to wind up LLP.