Limited Liability Partnership Act, 2008

Basics

- Applicability - Whole of India
- Enacted to - make provisions for the formation and regulation of LLP
- LLP Act, 2008 has 81 sections and 4 schedules

  First Schedule - Mutual rights and duties of partners, as well LLP and its partners where there is absence of a formal agreement
  Second Schedule - conversion of a firm into LLP.
  Third Schedule - conversion of a private company into LLP.
  Fourth Schedule - conversion of unlisted public company into LLP.
- Administrating the LLP Act, 2008 – Ministry of Corporate Affairs and the Registrar of Companies (ROC) (C.G has authority to frame rules)

Meaning & Concept of LLP

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

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

1) 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

- a limited liability partnership registered under this Act;
- a limited liability partnership incorporated outside India; and
- a company incorporated outside India,

but does not include

- a corporation sole;

- a co-operative society registered under any law for the time being in force; and
- 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.

2) 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.

In keeping with the Income tax law, the financial year for LLP should always be from 1st April to 31st March each year.

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

4) 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.

5) Partner [Section 2(1)(q)]: Means any person who becomes a partner in the LLP in accordance with the LLP agreement.

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

- Contribution of which, does not exceed twenty-five lakh rupees or such higher amount, not exceeding five crore rupees, as may be prescribed; and
- 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
- which meets such other requirements as may be prescribed, and fulfils such terms and conditions as may be prescribed.

Note: Definition of Entity, Business, Designated Partner & LLP are skipped as irrelevant.

Non-applicability of the Indian Partnership Act, 1932 (Section 4): IPA shall not apply to 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—

- 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.

Minimum number of partners (Section 6):

- Every LLP shall have at least two partners.
- 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.

  Clarification:

Designated partners (Section 7):

- Every LLP shall have at least two designated partners who are individuals and at least one of them shall be a resident in India.
- 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.
- **Resident in India:** Means a person who has stayed in India for a period of not less than 120 days during the financial year.

  Clarification: During the financial year -

Characteristics of LLP

1) Body Corporate [2(1)(d)], Perpetual Succession, Separate Legal Entity, Artificial Legal Person, Limited Liability – Same content as of Companies act, 2013.

2) Mutual Agency - All partners will be the agents of the LLP alone. No one partner can bind the other partner by his acts. Individual partners are shielded from other partners acts.

3) LLP Agreement - Mutual rights and duties of the partners within a LLP are governed by an agreement between the partners. Flexibility to partner to devise the agreement as per their choice. Absence of LLP Agreement – Follow LLP Act, 2008 (First Schedule)

4) Common Seal [Section 14(c)] - Act through its partners and designated partners. May have a common seal (not mandatory). 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

5) Management of Business – Partners are entitled to manage but only designated partners are responsible for legal compliances.

6) Minimum and Maximum number of Partners – 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.

Clarification:

7) Business for Profit Only - Essential requirement for forming LLP with a view to earn profit. Cannot be formed for charitable or non-economic purpose.

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

<u>**Note:**</u> Definition of Investigation, Compromise or Arrangement, Conversion of LLP, E-Filing of documents are skipped as irrelevant.

<u>**Advantages of LLP Form:**</u>

- 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
- Flexible capital structure
- Easy to dissolve

<u>**Incorporation of LLP (Section: 11)**</u>

- Following 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 RO of the LLP is to be situated;

Name of LLP	Proposed Business	Address of Registered office
Name & Address of each partner	Name & Address of each designated partner	other information prescribed

- Along with Incorporation Document, statement to be filed in prescribed form

Made by either advocate, CA, CS, Cost Accountant engaged in formation of LLP and
by anyone 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.

- Penalty - If a person makes a statement which he knows to be false or 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):

- Registrar shall retain the incorporation document
- Registrar shall within a period of 14 days register the incorporation document and issue a certificate signed by registrar and authenticated by his official seal
- Certificate shall be conclusive evidence that LLP is incorporated by 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 at the registered office and any other address specifically declared by the LLP
- 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.
- Penalty - If the LLP contravenes any provisions of this section, the

  LLP and its every partner shall be liable to a penalty of
  Rs 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): On registration a LLP shall, by its name, be capable of

- Suing and being sued;
- doing and suffering such other acts and things as bodies corporate may lawfully do and suffer.
- acquiring, owning, holding and developing or disposing of property, whether movable or immovable, tangible or intangible;
- having a common seal, if it decides to have one;

Name (Section 15):

- Every LLP shall have either the words "limited liability partnership" or the acronym "LLP" as the last words of its name.
- No LLP shall be registered by a name which, in the opinion of the Central Government is undesirable or 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 prescribed to the Registrar for the reservation of a name as the name of a proposed LLP or the name of existing LLP to change its name.
- Registrar may reserve the name for a period of 3 months from the date of intimation by the Registrar if he is satisfied, subject to the rules prescribed by the Central Government

Change of name of LLP (Section 17):

LLP, on its first registration or on re-registration,if its registered name is registered by a name which is identical with or too nearly resembles to any other LLP or a company or a registered trade mark of a proprietor under the Trade Marks Act, 1999,

then on an application of such LLP or proprietor or 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.

Note: 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

Notice to Registrar - Where a LLP changes its name or obtains a 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,

Registrar shall carry out necessary changes in the certificate of incorporation & within 30 days of such change, LLP shall change its name in the LLP agreement.

Default of LLP - The CG shall allot a new name to the LLP & Registrar shall enter the new name in the register of LLP and issue a fresh certificate of incorporation, which the LLP shall use thereafter. Nothing shall prevent LLP to change its name subsequently as per Section 16.

Note: Difference between LLP & Company, LLP & Partnership Firm – Cover From Book.