

the limited liability partnership act, 2008

• BACKGROUND & INTRODUCTION

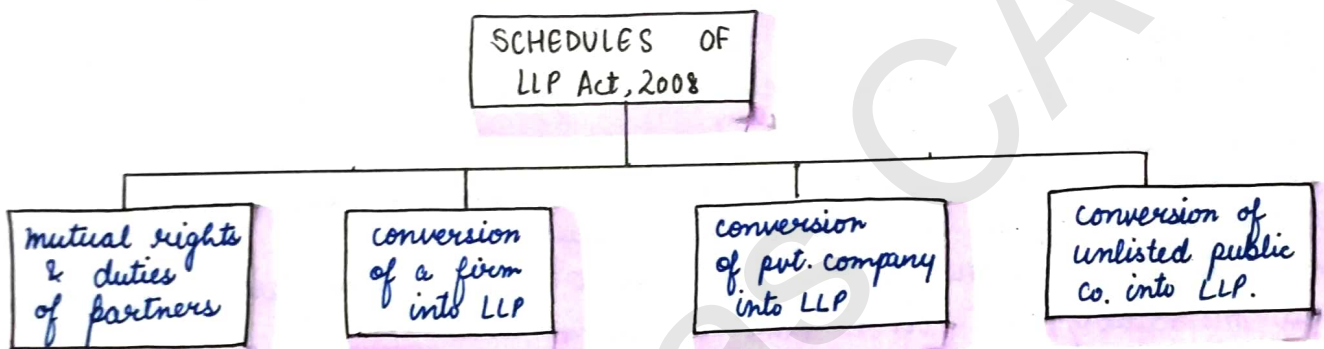
12 Dec, 2008 - Parliament passed the LLP Bill.

7 Jan, 2009 - President of India assented the Bill.

9 Jan, 2009 - Ministry of Law & Justice notified the LLP Act, 2008 in Official Gazette

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

→ has 81 sections & 4 schedules.



• NEED OF NEW FORM OF LIMITED LIABILITY PARTNERSHIP

- alternative corporate business vehicle.
- provides benefits of limited liability
- flexibility of organising their internal structure.
- suitable for small enterprises & for investment by venture capital.

• MEANING OF LIMITED LIABILITY PARTNERSHIP

LLP as a separate legal entity & business orgn. is an alternative corporate business form that gives the benefits of limited liability of a company & 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 & a partnership.

• CHARACTERISTICS OF LLP

(1) LLP is a body corporate :-

- formed & incorporated under this act.
- legal entity separate from that of its partners.
- shall have perpetual succession.
- Sec. 3 of LLP Act provides that a LLP is a body corporate.

- (2) Perpetual Succession :-
→ Death, insanity, retirement or insolvency of partners have no impact on the existence of LLP.
- (3) Separate legal entity :-
→ liable to the full extent of its assets but liab. of partners is limited to their agreed contribution in LLP.
→ Creditors of LLP shall be creditors of LLP alone.
- (4) Mutual agency :-
→ all partners will be the agents of LLP alone & no partner can bind the other partner by his acts.
- (5) LLP agreement :-
→ Mutual rights & duties of the partners within a LLP are governed by an agreement b/w the partners.
- (6) Artificial legal person :-
→ Created by a legal process & clothed with all rights of an individual.
→ It can do everything which any natural person can do.
- (7) Common seal :-
→ may have a common seal, if it decides to have one (shall remain under the custody of some responsible official)
→ shall be affixed in the presence of at least 2 designated partners of LLP.
→ not mandatory for a LLP to have a common seal.
- (8) Limited liability :-
→ liab. of partners will be limited to their agreed contribution in LLP.
→ Contribution may be tangible or intangible in nature or both.
- (9) Management of Business :-
→ Partners are entitled to manage the business.
→ Designated partners are responsible for legal compliances.
- (10) Minimum & Maximum number of partners :-
→ Minimum - at least 2 partners & 2 individuals as designated partners (at least one shall be resident in India).
→ no maximum limit.
- (11) Business for profit only :-
→ Carry on a lawful business with a view point of earning profit.
→ not for charitable or non economic purpose.
- (12) Conversion into LLP :-
→ a firm, prt. company or unlisted public co. is allowed to convert into LLP in accordance with the provisions of LLP Act, 2008.
- (13) E-filing of Documents :-
→ shall be filed in computer readable electronic form on its website www.mca.gov.in

(14) Foreign LLPs :-

- LLP formed, incorporated or registered outside India which established as place of business within India.
- Foreign LLP can become a partner in an Indian LLP.

(15) Investigation :-

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

(16) Compromise or arrangement :-

- merger & amalgamation of LLPs shall be in accordance with provisions of LLP Act, 2008.

• ADVANTAGES OF LLP FORM

- Organized & operates on the basis of agreement.
- provides flexibility without imposing detailed legal & procedural requirements.
- easy to form.
- all partners enjoy limited liability.
- flexible capital structure.
- easy to dissolve.

• INCORPORATION OF LLP

* Incorporation Document (see 11)

- two or more persons associated for carrying on a lawful business with a view to earn profit - subscribe their names to incorporation document.
- Inc. Doc. shall be filed with fees with the Registrar of state which registered office of LLP is to be situated.
- Statement to be filed :-
 - shall be filed along with inc. doc. in prescribed form.
 - made by either advocate, CS, CA or Cost Accountant, who is engaged in formation of LLP.
 - by any one who subscribed his name to inc. doc.
 - that all requirements of this act & rules have been complied with respect of incorporation.
- Contents of Incorporation document

- 1) state the name of LLP.
- 2) state the proposed business of LLP.
- 3) state the registered office of LLP.
- 4) state the name & address of each of the persons who are to be partners of LLP on incorporation.
- 5) state the name & address of the persons who are to be designated partners of LLP on incorporation.
- 6) Other info. as may be prescribed.

- If a person makes a statement 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.
 - with fine which shall not be less than ₹10,000 but which may extend to ₹5 lakhs.

* Incorporation by Registration (sec 12)

- When the requirements have been complied with the registrar, within a period of 14 days -
 - a) register the incorporation document &
 - b) give a certificate that the LLP is incorporated by the name specified therein.
- The certificate shall be signed by the registrar & authenticated by his official seal.
- Certificate shall be conclusive evidence that the LLP is incorporated.

* Registered Office of LLP & Change therein (sec 13)

- Every LLP shall have a registered office.
- document may be served on a LLP or a partner or designated partner thereof by sending at the registered office & any other address specifically declared by the LLP.
- LLP may change the place of its registered office & file the notice of such change with the Registrar. & any such change shall take effect only upon such filing.
- If LLP contravenes any provisions of this sec., every partner shall be liable to a penalty of ₹500 for each day, subject to maximum of ₹50,000 for the LLP & its every partner.

* Effect of Registration (sec 14)

On registration a LLP shall, by its name, be capable of -

- 1) suing & being sued.
- 2) acquiring, owning, holding & developing or disposing of property, whether movable or immovable, tangible or intangible.
- 3) having a common seal, if it decides to have one.
- 4) doing or suffering such other acts & things as bodies corporate may do & suffer.

* Name (sec 15)

Every LLP shall have either the words 'limited liability partnership' or the acronym 'LLP' as the last words of its name.

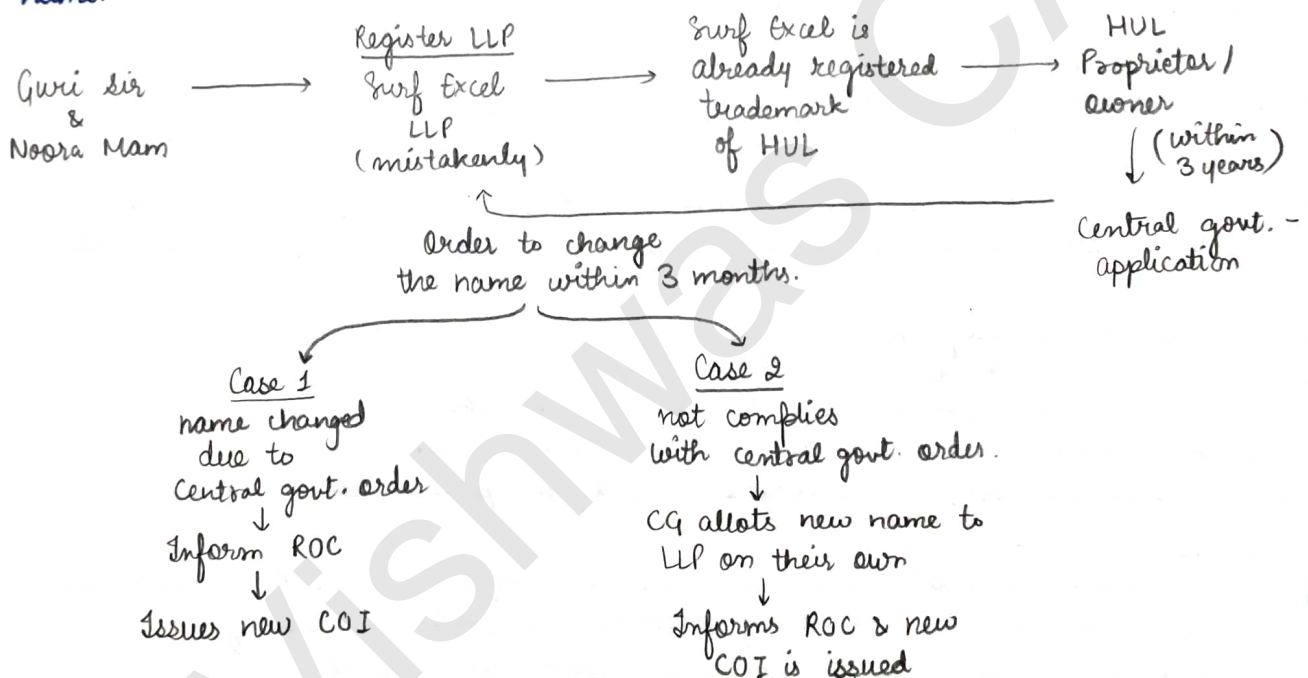
* Reservation of Name (sec 16)

- a person may apply to the Registrar for the reservation of a name set out in the application as -

- (a) the name of proposed LLP is
- (b) the name to which a LLP proposes to change its name.
- Upon receipt of an application, the registrar may reserve the name for a period of 3 months from the date of intimation by the Registrar.

* Change of name of LLP (Sec 17)

- If through inadvertence or otherwise, a LLP 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.
- The central govt. 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.
- If the LLP is in default, Registrar shall enter the new name in the Register of LLP in place of the old name & issue a fresh certificate of incorporation with new name.



• IMPORTANT DEFINITIONS

(1) Body Corporate :- It means a company which

includes

- 1) a LLP registered under this act
- 2) LLP incorporated outside India.
- 3) company incorporated outside India
- 4) Co. registered under TCA, 2013 or any prev. company law.

excludes

- 1) a corporation sole
- 2) co-operative society registered under any law for the time being in force.
- 3) any other body corporate which CG may, by notification in official Gazette specified.

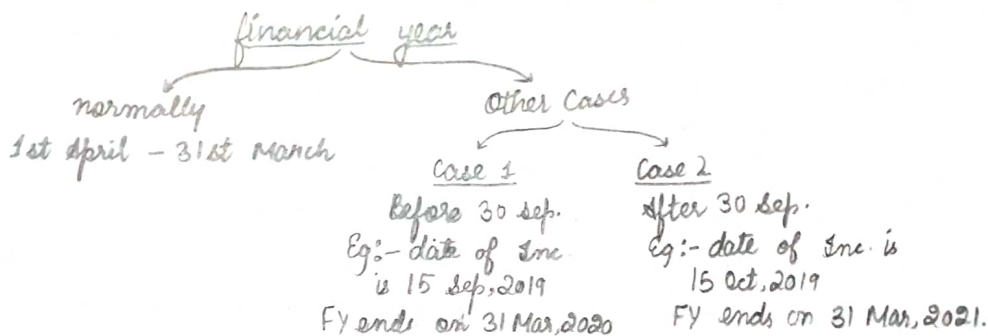
(2) Business :-

includes every trade, profession, service & occupation except any activity which the Central govt. may, by notification exclude.

(3) Financial Year :-

(in relation to a LLP) period from 1st day of April of a year to the 31st day of March of the following year.

- However, if the LLP is incorporated after 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.



(4) Foreign LLP :-

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

(5) Limited liability Partnership :- (sec 2(1)(n))

means a partnership formed & registered under this Act.

(6) limited liability Partnership agreement :-

any written agreement btw the partners of LLP or btw the LLP & its partners which determines the mutual rights & duties of partners & their rights & duties to that LLP.

(7) Small limited liability Partnership :-

It means a limited liability partnership -

- the contribution of which, does not exceed ₹ 25 lakhs
- and the turnover of which, does not exceed ₹ 40 lakhs or
- which fulfils the terms & conditions as may be prescribed.

(8) Partners (sec 5):-

any individual or body corporate may be a partner in LLP. However, an individual shall not be capable of becoming a partner of LLP if -

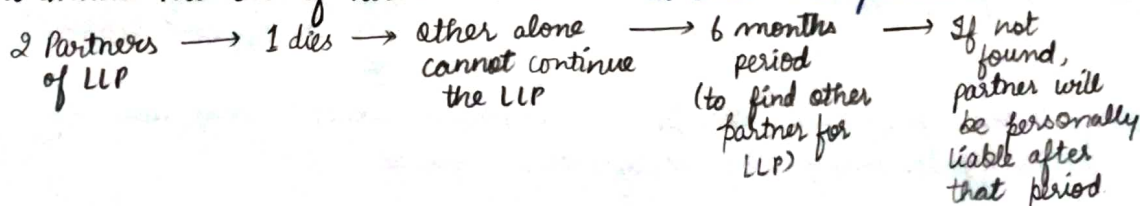
- he has been found to be of unsound mind by a Court.
- he is an undischarged solvent
- adjudicated as insolvent and his application is pending.

(9) Designated Partners (sec 7):-

- at least two designated partners, at least one of them shall be resident in India.

[Resident of India means a person who has stayed in India for a period of not less than 120 days during the financial year.]

Minimum Number of Partners (sec 6):- at least two partners



DISTINCTION BETWEEN LLP & PARTNERSHIP FIRM

Basis	LLP	Partnership Firm
Regulating act	The Limited Liability Partnership Act, 2008.	The Indian Partnership Act, 1932.
Body corporate	It is a body corporate.	It is not a body corporate.
Separate legal entity	legal entity separate from its members.	group of persons with no separate legal entity.
Creation	Created by a legal process (registration under LLP Act, 2008)	created by agreement between partners.
Registration	Mandatory	Voluntary
Perpetual Succession	Partners may join or leave but its existence continues forever.	It has no perpetual succession.
Name	must contain limited liability partnership (LLP) as suffix.	No guidelines.
Liability	limited to the extent of agreed contribution.	unlimited.
Mutual agency	Each partner can bind the LLP by his own acts but not the partners.	Each partner can bind the firm as well as other partners by his own acts.
Designated Partners	atleast 2 designated partners, one of which should be the resident of India.	no provisions for such partner.
Common seal	It may have its common seal as its official signature.	no such concept.
Legal Compliances	Only designated partners are responsible.	all partners are responsible.
Annual filing of document	LLP is required to file: 1) annual statement of accounts 2) statement of solvency 3) Annual return with registrar of LLP every year.	not required to file any annual document.
Foreign Partnership	Foreign nationals can become a partner in a LLP.	cannot become a partner.
Minor as partner	Minor cannot be admitted to the benefits of LLP.	Minor can be admitted to the benefits of partnership with prior consent of existing partners.

DISTINCTION BETWEEN LLP & Limited Liability Company

Basis	LLP	Limited Liability Co.
Regulating act	The LLP Act, 2008.	The Companies Act, 2013.
Members / Partners	The persons who contribute to LLP are known as partners of LLP.	The person who invest money in the shares of company is known as members of Co.
Internal governance structure	governed by contract agreement between the partners.	Regulated by Companies Act, 2013.
Name	must contain 'limited liability Partnership' or 'LLP' as suffix.	Public Co. - 'limited' Private Co. - 'Pvt. Ltd.'
no. of partners / members	minimum - 2 partners maximum - no such limit	Private Co. :- Max. - 200 members Min. - 2 members Public Co. :- Min. - 7 members Max. - no such limit
Liability of members / Partners	limited to the extent of their agreed contribution.	limited to the amt. unpaid on the shares held by them.
Management	managed by partners including designated partners.	managed by board of directors elected by the shareholders.
Minimum no. of directors / designated partners	min. - 2 designated partners	Pvt. Co. - 2 directors Public Co. - 3 directors