

LIMITED LIABILITY PARTNERSHIP ACT, 2009

CA. R G Sarda, B.Com (Hons), FCA, PGDADR, DISA (ICAI)

Meaning of LLP & its Objectives

Limited Liability Partnership (LLP):

- | LLP is a partnership formed and registered under LLP Act. (A hybrid of partnership firm and company.)

Objectives of formation of LLP:

LLP will be a new corporate form of doing business and profession.

- | Important vehicle to cater to the needs of

professionals, small-scale sector and venture capital funds as well as innovative business models which would lead to setting up of multi-disciplinary partnerships.

Nature of LLP

- | Ministry of Corporate Affairs is the administrative ministry and Registrar of Companies is the administrative authority.
- | LLP is a body corporate having perpetual succession and is a legal entity separate from its partners. Any change in the partners shall not affect the existence, rights or liabilities of LLP.

DISAGREEMENT MIGHT BE THE SHORTEST CUT BETWEEN TWO MINDS.

Any individual (who is of sound mind and is solvent) or body corporate can be a partner of LLP.

- ┆ Every LLP shall have at least two Designated Partners who must be individuals and at least one of them shall be a resident in India. If a body corporate is partner of LLP, it can nominate a person as Designated Partner.
- ┆ Prior Consent of an individual is required for his appointment as 'Designated partner'. Every designated partner will obtain a Designated Partner Identification Number (DPIN) from the Central Government.
- ┆ Every designated partner shall be responsible in respect of compliance of the provisions of LLP Act.
- ┆ LLP is required to appoint Designated Partner within 30 days of vacancy, if any. If it is not so appointed or there is only one Designated Partner, each partner shall be deemed to be a Designated Partner.
- ┆ Designated Partner has no implied authority to conduct day to day business of LLP. It can be given through LLP Agreement.

Incorporation of LLP

- ┆ Two or more persons can associate for carrying out any lawful business with a view to profit. The incorporation documents containing details like name, proposed business, name & address of partners and designated partners etc., required to be filed with the RoC.
- ┆ RoC shall register the incorporation document and issue Certificate of Incorporation.
- ┆ Every LLP shall have a registered office.
- ┆ Every LLP shall have either the words "Limited Liability Partnership or "LLP" as last words of its name.

Effect of Registration

On registration, LLP shall be capable of -

- suing and being sued;
- acquiring, owning, holding or disposing of property;
- having a common seal, if it decides to have one and
- doing such other acts and things as bodies corporate may lawfully do.

Partners and their relations

After incorporation, LLP may have Limited Liability Partnership Agreement. This agreement will govern the mutual rights and duties of partners and mutual rights and duties of LLP and its partners. In the absence of such agreement, mutual rights and duties of partners and LLP shall be determined in accordance with the provisions of First Schedule.

- ┆ A person may cease as a partner in accordance with agreement or by giving a notice of at least 30 days to other partners of his intention to resign as a partner.
- ┆ A person ceases to be partner on his death or dissolution of LLP or if he is declared of unsound mind or adjudged as insolvent.
- ┆ LLP shall file notice with the RoC within 30 days from the date on which a person becomes or ceases to be a partner

or from any change in the name and address of a partner.

- ┆ A person who ceases to be partner, may also file notice of his resignation within 30 days.

A new partner can be admitted only with consent of all existing partners, as per First Schedule. However, LLP Agreement may provide otherwise.

- ┆ A partner can not be expelled from LLP unless there is specific provision in LLP Agreement.

Limitation of Liability of LLP and partners

- ┆ Every partner of LLP is agent of LLP but not of other partners.
- ┆ LLP will be liable if a partner of LLP is liable to any person as a result of wrongful act in the ordinary course of business.
- ┆ Obligations of LLP shall be solely the obligation of LLP and shall be met out of the property of LLP.
- ┆ Partner will be personally liable only for his wrongful act and not of other partners.
- ┆ Holding Out - If a person represents himself as partner of LLP, he will be liable to person who acts in good faith on basis of such representation.
- ┆ In case of an act by LLP or its partner with intent to defraud creditors or other person or any fraudulent purpose, liability of LLP and concerned partner shall be unlimited.

An employee or partner can provide information about any wrong doing of LLP. In such case, penalty on him will be reduced by Tribunal and he can not be discharged, demoted or harassed because of providing such information.

Contribution to Capital

- ┆ A partner can contribute to the capital of LLP either in terms of money, property or contract for services.
- ┆ Monetary value of contribution of each partner shall be accounted for and disclosed in the accounts of LLP.
- ┆ In absence of any contrary provision in LLP Agreement, all partners are entitled to share equally in capital, profits and losses of LLP.

Financial Disclosures

- ┆ Each LLP is required to maintain books of accounts. Accounts should be audited, unless exempted by Central Government.
- ┆ Statement of Account and Solvency shall be prepared within 6 months of close of financial year and filed with RoC within prescribed time.
- ┆ Annual Return shall be filed with RoC within 60 days of closure of financial year.
- ┆ Non-filing of these financial disclosures attracts very heavy fines on the Designated Partners.

Transfer of Partnership Rights

Right of a partner to share profit or loss of LLP is transferable either wholly or in part. However, transferee is not entitled to participate in management or access information regarding transactions of LLP.

Investigation

Affairs of LLP can be investigated by Central Govt. in the following cases:

- Not less than 1/5th partners make an application along with supporting evidence and security amount as prescribed.
- The LLP makes an application that the affairs of it ought to be investigated
- In the opinion of Central Govt, there are circumstances suggesting that
 - i. The business is being or has been conducted with an intent to defraud creditors or partners or others.
 - ii. The affairs are not conducted in accordance with the LLP Act
 - iii. On receipt of report of the Registrar or any other investigating or regulatory agency it appears that the affairs of LLP ought to be investigated.

Conversion to LLP

- ┆ A firm, a private company and unlisted public company may convert itself into LLP.
- ┆ RoC shall issue certificate of registration, on satisfying that all the provisions of the Act and related Schedules have been complied with.

Such LLP shall inform the Registrar of Firms or Registrar of Companies about such conversion within 15 days of the date of registration.

- ┆ All property of firm or company shall vest in LLP.

Compromise or Reconstruction

- ┆ Compromise or arrangement can be made between LLP and its creditors or LLP and its partners.
- ┆ On the application of LLP or creditor or partner, Tribunal

may order a meeting of the creditors or partners to be held.

- ┆ If majority (3/4th in value) of creditors or partners agree to such compromise at the meeting, such compromise shall be binding on all the creditors or partners, if sanctioned by the Tribunal.
- ┆ An order made by the Tribunal shall be filed with the RoC within 30 days.

Winding up and Dissolution

- ┆ Winding up of LLP may be either voluntary or by the order of the Tribunal.

LLP may be wound up in the following six circumstances:

- a. if LLP decides that it should be wound up;
- b. if number of partners is reduced below 2, for a period of more than 6 months;
- c. if LLP is unable to pay its debts;
- d. if LLP has acted against the sovereignty & integrity of India;
- e. If LLP has made default in filing financial disclosure for five consecutive financial years and
- f. If Tribunal is of opinion that it should be wound up.

Miscellaneous Provisions

- ┆ A partner may lend money to LLP and shall have same rights and obligations as a creditor.
 - ┆ Central Govt. can make applicable any provisions of the Companies Act, 1956 with suitable modifications.
 - ┆ Fee for late filing of document is Rs. 100 per day. Late filing upto 300 days is permissible.
- RoC can strike off defunct LLP after giving a reasonable opportunity for hearing.

Comparative Analysis H

Traditional Partnership	Limited Liability Partnership
Unlimited personal liability of each partner for dues of the partnership firm. Personal assets of each partner also liable.	Limited liability. No personal liability of partner, except in case of fraud.
Partnership is registered under partnership Act. Registration is not mandatory.	LLP is incorporated under LLP Bill. Incorporation is mandatory.
Not a legal entity separate from its partners.	It is a legal entity separate from its partners.
Partnership deed is executed.	'Incorporation Document' is required to be executed. LLP Agreement is required in almost all cases, though it is not mandatory.
Minimum 2 and maximum 20 partners	Minimum 2 and no limit on maximum number of partners.
Documents are required to be filed with registrar of firms (of respective states)	ROC is the administrating authority.
All partners are liable for statutory compliances.	Only Designated Partners are liable for statutory compliances.
Partner can not enter into business with firm.	Partner of LLP can enter into business with LLP.
Every partner of firm is agent of firm and also of other partners.	Every partner of LLP is only agent of firm.

H

H

Filing of Accounts and Statement of Solvency and Annual Return are not required.	Filing of Accounts and Statement of Solvency and Annual Return are required.
Partnership firm can be dissolved.	LLP can be wound up.

Comparative Analysis

Company	Limited Liability Partnership
Memorandum is to be filed with RoC.	Incorporation document is required to be filed.
Memorandum should contain the name of State where registered office is situated.	Incorporation document is not required to contain name of the State.
Name to contain 'Limited or 'Private Limited' at the end.	Name to contain 'Limited Liability Partnership or 'LLP' at the end.
Articles are to be filed at the time of incorporation.	LLP Agreement is to be filed later on. In its absence, provisions of First Schedule shall apply.
Managing Director to look after day to day administration.	Designated Partner to look after statutory compliances. All partners can look into affairs of LLP.
Restriction on remuneration payable to the Directors.	No restriction on remuneration to partner. It should be provided in LLP Agreement.

H

STEPS FOR CONVERSION OF PARTNERSHIP TO LLP

A partnership firm may apply to convert into LLP if and only if the partners of the LLP to which the partnership firm is to be converted, comprise all the partners and no one else. Any changes in partners can be done after conversion only.

1. Apply in Form 1 for reservation of name.
2. Apply in Form 17 for conversion to LLP with the following attachments:
 - Consent of all partners in the format prescribed.
 - Incorporation document in Form 2
 - Declaration for incorporation of LLP in Form 3
 - Statement of Assets and Liabilities of partnership firm
 - List of all creditors along with their consent
 - Authorization to make declaration by all the partners in favor of a designated partner of LLP.

On conversion ROC will issue a certificate of registration in Form 19. The LLP shall inform the concerned Registrar of Firms about the conversion into LLP in Form 14 within 15 days of conversion.

EFFECTS OF CONVERSION

1. The firm shall be deemed to be dissolved and name shall be removed from the register of firms.
2. All properties, assets, interests, rights, privileges,

liabilities, obligations of the firm are transferred to LLP. In cases of immovable and movable assets registered with any authority the LLP as soon as possible after the date of registration take all necessary steps to notify the authority of the conversion.

3. The conversion does not affect the existing liabilities, obligations, agreements, contracts and continuation of employment.
4. The LLP shall replace the firm in the following cases:
 - pending proceedings by or against the firm
 - any conviction, ruling, judgment or order in favor or against the firm
 - existing agreements, contracts, etc
 - any appointment, authority or power of the firm

NOTICE OF CONVERSION IN CORRESPONDENCE

The LLP shall ensure that for a period of 12 months commencing not later than 14 days after the date of registration the letter head of LLP shall clearly indicate that it was converted from a firm to LLP w.e.f. and the name and registration number of the firm from which it was converted.

LIABILITIES OF FIRM BEFORE CONVERSION

Every partner of a firm that converted into LLP shall continue to be personally liable (jointly and severally with the LLP) for the liabilities of the firm incurred prior to conversion or which arose from any contract entered into prior to conversion. ■