

LIMITED LIABILITY PARTNERSHIP ACT, 2008

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Some Questions....

Q. What is LLP?

Ans. It is a hybrid structure & new business vehicle combining the features of both traditional partnership and company.

Q. What is the position after coming of LLP Act, 2008. Has the Partnership Act, 1932 become redundant?

Ans. Alternate structure. No

LLP Act – Key Definitions (Section 2)

Body Corporate:

means a company as defined in section 3 of the Companies Act, 1956 and includes:

- a) A LLP registered under this Act
- b) A LLP incorporated outside India; and
- c) A company incorporated outside India

But does not include:

- a) A corporation sole
- b) A co-operative society; and
- c) Any other body corporate which the CG may by notification specify in this behalf

LLP Act – Key Definitions (Section 2)

Business:

includes every trade, profession, service and occupation.

LLP Agreement:

means any written agreement between the partners of LLP

OR between the LLP and its partners

Which determines the mutual rights & duties of partners inter-se and in relation to the LLP

LLP Act – Definitions (Section 2)

Partner:

means any person who has become a partner in LLP in accordance with the LLP agreement

Designated Partner:

Any partner designated as such partner pursuant to Section 7

Nature/Salient Features of LLP (Sec 3-6)

- Body Corporate with perpetual succession
- Requires a LLP agreement which is to be registered with RoC
- Who can be Partners –

Any individual or Body Corporate can be a partner.

Body Corporate : as defined in section 2

Individual: Any individual can be a partner except:

a) he has been found to be of unsound mind by a Court of competent jurisdiction & finding is in force;

b) he is an undischarged insolvent; or

c) he has applied to be adjudicated as insolvent and his application is pending

Nature/Characteristics of LLP (Sec 3-6)

- Number of Partners: Minimum number of partner is 2 and maximum is not specified
- If at any time the number of its partners fall below 2 and LLP continues to carry on business for more than 6 months, the person who is the only partner during such time and has knowledge of the fact, shall be liable personally for the obligations of LLP incurred during that period.
- Taxation: Shall be similar to Partnership except AMT (Alternate Minimum Tax) applicable to LLP and not to traditional partnership.

Case Studies

Q. A, B and C got together to carry on their CA business in partnership. They are considering to register themselves as partnership with RoF or as LLP with RoC. What would you advise and why?

Q Can a partnership registered under IPA , 1932 be a partner in LLP?

Can a LLP registered under LLP Act, 2008 be a partner in LLP?

Designated Partners(Section 7-10)

- Every LLP shall have atleast two designated partners
- Both should be individuals (can be nominee of the body corporate)
- Atleast one of them should be resident in India (the term 'resident in India' means a person who has stayed in India for a period ≥ 182 days during the immediately preceding one year)

Designated Partners(Section 7-10)

- The incorporation document or LLP agreement can specify who are to be DP. It can also state that each partner from time to time would be DP.
- Individuals can become DP only if he has given prior consent to act as such, in the prescribed form and manner. LLP shall file with the RoC the particulars of such individual within 30 days of appointment.
- Every DP shall obtain a DPIN from the CG (DPIN is now integrated with DIN and so DP can obtain either DPIN or DIN)

Designated Partners(Section 7-10)

- Liabilities of DP: Unless provided otherwise, DP shall be responsible for doing all acts, matters & things required to be done by the LLP (as per Act as well as LLP agreement)
- DP shall also be liable for all penalties imposed on LLP for any contravention of the provisions
- If at any time there is no DP or there is only one DP, each partner shall be deemed to be DP.

Designated Partners(Section 7-10)

- Punishment for contravention:

For non-appointment – Fine 10,000 ~ 5 Lakh

For other contraventions- Fine 10,000 ~ 1 Lakh

Q. Four friends want to register an LLP and two of them became DP. After sometime one DP resigns but since there was a deadlock as to who should become DP, the firm continued to carry on business with 1 DP for 8 months. The Government want to take an action. What and against whom can it be taken?

Extent and Limitation of Liability of LLP (Section 26-31)

Partner as agent of LLP

- Every partner of LLP is, for the purposes of the business of LLP, the agent of LLP, **but** not of other partners
- LLP is responsible for any act of partner, including wrongful act or omission, done in the course of business of LLP OR with its authority
- An obligation of LLP shall be solely LLP's obligation met out of the property of LLP. A partner is not personally liable except when the liability has arisen due to his own wrongful act or omission.

Extent and Limitation of Liability of LLP (Section 26-31)

Unlimited Liability in case of fraud (Section 30)

- Where an act is carried out by the LLP or any of its partners with an intent to defraud or for any fraudulent purposes, the liability of LLP and the partner who so acted shall be unlimited.
- LLP can absolve of liability provided it establishes that the act was done without its knowledge or authority.
- Every person (employee, partner etc) who was knowingly a party to such fraud shall be punishable with imprisonment < 2 years **and** with fine btw 50K~5L + compensation to the person who has suffered.

Extent and Limitation of Liability of LLP (Section 26-31)

Holding Out (Section 29)

- Where any person expressly or by conduct represents himself or knowingly permits himself to be represented as a partner of LLP, he shall be liable to any person who has on the faith of such representation given credit to the LLP.
- LLP shall also be liable to the extent of credit received or financial benefit derived.
- However, legal representative or estate of a deceased partner not liable by holding out, for any acts of LLP done after his death, merely because the business is continued in same or his name.

Extent and Limitation of Liability of LLP (Section 26-31)

Whistle Blowing (Section 31)

- Whistle Blowing means exposing a wrong doing with the hope of bringing it to an end.
- The Court or Tribunal may reduce or waive of any penalty leviable against a partner/employee if satisfied that:
 - a) he has provided useful information during investigation
 - b) he has provided information that leads to conviction

Also, no whistle blower shall be demoted, suspended, harassed or discriminated against in any manner.

Case Studies

Q. X, a partner of an LLP carries a company audit negligently and overlooks gross embezzlement of funds, in return of higher audit fees from the company. The fraud is later discovered. Against whom can the shareholders bring an action? Can the LLP and other partners absolve itself of liability?

Q. A, an employee of XYZ LLP, gives vital information regarding LLP during investigation against it. LLP brings an action against A for leaking information against his employment clause. A wants protection. What can he do?

Conversion into LLP

(Section 55-58 OR Chapter X)

- Conversion from a firm to an LLP: in accordance with Chapter X and Second Schedule of LLP Act, 2008 (Section 55)
- Conversion from a private company to an LLP: in accordance with Chapter X and Third Schedule of LLP Act, 2008 (Section 56)
- Conversion from an Unlisted Public company to an LLP: in accordance with Chapter X and Fourth Schedule of LLP Act, 2008 (Section 57)

Conversion into LLP (Section 55-58 OR Chapter X)

Common Procedure and effect (Section 58):

- Registrar on being satisfied that provisions of the respective schedule has been complied with.
- Register the documents submitted+ issue a Certificate of Registration stating that LLP is registered under this Act from the date specified
- LLP must inform, within 15 days, the RoC or RoF of such conversion and of the particulars of the LLP

Conversion into LLP (Section 55-58 OR Chapter X)

- Effect:
 - a) there emerges an LLP by the name specified in the Certificate of Registration
 - b) All tangible and intangible property vested in the firm or company will be transferred and vested in the LLP
 - c) the firm or company is deemed to be dissolved and removed from the records of the Registrar of Firm or Companies.

Winding up and Dissolution (Section 63-65)

- Two modes – voluntary & by the Tribunal
- Central Government has made LLP (Winding up & Dissolution) Rules, 2010 giving procedure for winding up and dissolution of LLP
- Grounds for voluntary dissolution:
 - a) when the period fixed for LLP has expired
 - b) the event fixed for dissolution has occurred
 - c) LLP passes a special resolution that it be wound up

Winding up and Dissolution (Section 63-65)

- Grounds for dissolution by Tribunal

On an application by LLP/creditor/contributory /RoC/CG, the Tribunal may order winding up on any of the following grounds:

- a) LLP so decides and applies;
- b) LLP is unable to pay its debts;
- c) for a period of more than 6 months, the number of partners is reduced below 2;
- d) LLP has made a default in filing with the Registrar the Statement of Accounts or Annual Return for any 5 consecutive financial years;
- e) LLP has acted against the sovereignty and integrity of India; or
- f) Tribunal is of the opinion that it is just & equitable to do so

Case Studies

Q. Can a listed company convert into an LLP? If yes, how?

Can an LLP convert into a company?

Q. One of the partners of LLP is guilty of gross misconduct and breach of agreement. Can the other partners of LLP apply for winding up? If yes, on what ground?