

# THE LIMITED LIABILITY PARTNERSHIP, ACT 2008



FOR BCOM PROG SEM 2, BUSINESS LAWS

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# CHAPTER 1 : INTRODUCTION TO LLP

- “A corporate business vehicle that enables professional expertise and entrepreneurial initiative to combine and operate in flexible, innovative and efficient manner, providing benefits of limited liability while allowing its members the flexibility of organizing their internal structure as a partnership.
- LLP is a new form of hybrid business entity which combines the advantages of a corporate structure and traditional partnership structure.
- Indian government passed LLP act on 09/01/2009
- LLP Act , 2008 gets notified w.e.f. March 31<sup>st</sup> , 2009.
- The act is divided into XIV chapters , contains 81 sections and four schedules and it extends to whole of India.
- The first LLP was registered on April 2<sup>nd</sup> , 2009.
- As on 30<sup>th</sup> September, 2018, the number of LLPs registered in the country was 1,31,774 and out of these 1,18,818 LLPs were active.

# Regulatory framework of LLPs in India

Legal

LLP Act, 2008

Administrative

Ministry of  
Corporate  
Affairs

Taxation

Income Tax  
Act, 1961

# ADMINISTRATIVE MECHANISM OF LLP Act

- **The Ministry of Corporate Affairs (MCA) and Registrar of Companies (ROC)** are entrusted with the task of administration of LLP Act, 2008 and the rules made thereunder.
- ROCs are appointed by the Central government for each state and the LLPs are required to file documents and returns with the ROC.

## AMENDMENTS IN LLP Act, 2008

- The act was amended w.e.f 15 th November 2016 by deletion of clause 'C' of sec. 64 by the Insolvency and Bankruptcy Code , 2016. by virtue of this amendment "inability to pay debts" has been ruled out as the ground for compulsory winding up by the tribunal.
- The LLP (Amendment ) Rules, 2018 amended the rule related to the obtaining of DPIN(Designated Partner Identification Number) by individuals.
- The second amendment of the rules w.ef.02/10/2018 has amended rules 11 and 13. Erstwhile Form 1 (Application for the reservation of name )has been replaced by **RUN-LLP( Reserve Unique Name –LLP)**. Erstwhile Form 2 (Incorporation Document and Subscribers' statement ) has been replaced by **FiLLiP (Form for Incorporating LLP)**.

# SALIENT FEATURES OF LLP

- A LLP is a body Corporate formed and registered under LLP Act, 2008 with a distinct LLP identification number (LLPIN).
- A LLP is a separate legal entity from the partners.
- It is an artificial legal person as it is created by a legal process.
- LLP enjoys perpetual succession just like a joint stock company.
- LLP may have a common seal with its name engraved upon along with the place and date of incorporation, if it decides to have one as it is not mandatory.
- The liability of the partners will be limited to their agreed contribution in the LLP except for the partners guilty of fraud (they will have unlimited liability).
- There is no mutual agency in case of LLP.
- Every LLP shall have minimum of two partners and there shall be at least 2 individuals as designated partner of whom at least one should be the resident in India.

# SALIENT FEATURES OF LLP

- There is no maximum limit on the number of partners in LLP.
- LLP cannot be formed for charitable or not for profit purpose.
- The mutual rights and duties of the partners are governed by an agreement between partners.
- Every LLP shall compulsorily maintain its annual accounts.
- A Firm, private company or an unlisted public company can be converted into LLP as per the provisions contained in schedule II, III, IV respectively.
- The winding up of the LLP may be under Insolvency and Bankruptcy Code, 2016 or voluntary or by the tribunal.
- The central government may apply any provisions of the Companies Act on LLP by notification in Official Gazette.
- Income Tax Act, 1961 shall be applicable for the taxation of LLP.

# SALIENT FEATURES OF LLP

- ❑ LLP can be converted into Joint stock company as per the Companies (Amendment )Act, 2017.
- ❑ Every LLP shall file its documents with MCA.
- ❑ A foreign LLP can become a partner in an Indian LLP.
- ❑ The Central Government has the power to investigate the affairs of an LLP by appointing an inspector.
- ❑ Mergers and Acquisitions of LLPs may take place.
- ❑ The partnership Act , 1932 shall not be applicable to LLPs

**DIFFERENCE BETWEEN  
PARTNERSHIP FIRM , LIMITED  
LIABILITY COMPANY AND LLP**





<b>Basis</b>	<b>Partnership Firms</b>	<b>LLP</b>
Regulating Act	The Indian Partnership Act, 1932	The Limited Liability Partnership Act, 2008
Body corporate	It is not a body corporate	It is a body corporate
Separate legal entity	It has no separate legal existence	It has separate legal existence From that of its members
Registration	voluntary	Mandatory
Perpetual succession	It doesn't have perpetual succession	It enjoys perpetual succession
Maximum No. of partners	50	LLP act is silent on the maximum limit
Liability	Liability of each partner is unlimited. It is joint as well as several	Liability of each partner is limited to the extent of its contribution.

Basis	Partnership Firms	LLP
Mutual agency	Each partner can bind the firm as well as other partners by his own acts.	Each partner can bind the LLP by his acts but not the other partners
Common seal	No such concept in partnership	It may have common seal
Designated partners	There is no such concept under Indian partnership Act 1932	At least two designated partners and at least one of them shall be resident in India
Legal Compliances	All partners are responsible for all the compliances and penalties under the Act.	Only designated partners are responsible for the legal compliances
Foreign Nationals	Cannot become a partner	Can become a partner in a LLP
Amount of default for insolvency resolution	Default in payment of debts of Rs 1000 or more shall be a ground for filing application for insolvency resolution.	Default in payment of debts of Rs 100,000 or more shall be a ground for filing application for insolvency resolution.

Basis	Limited Liability Company	LLP
Regulating Act	The Companies Act, 2013	The Limited Liability Partnership Act, 2008
Members/Partners	The persons who invest the money in the shares are known as shareholders of the company	The persons who contribute to LLP are known as partners
Internal governance structure	It is regulated by statute i.e. Companies Act, 2013	It is governed by contractual agreement between the partners.
Name	Name of the public company to contain the word “limited”, and Pvt. Co to contain the word “private limited “as suffix.	Name of the LLP to contain “Limited liability partnership or LLP” as suffix.
No. of Partners/Members	<b>Private Company :</b> Min- 2 members Max- 200 members <b>Public Company:</b> Min: 7 Max: no such limit <b>One person company (OPC)</b> One member only	Min: 2 members Max: No such limit
Liability	Liability of a member is limited to the amount of unpaid shares held by them.	Liability of each partner is limited to the extent of its contribution
Conversion	Listed public company cannot be converted into LLP	LLP can be converted into joint stock

# CHAPTER 2: INCORPORATION OF LLP

# REGISTRATION PROCESS

Two or more persons come together to associate as an LLP

Select minimum two of them (individuals or nominees of body corporate ) as **designated partners**. One of them must be **resident of India**.

Check availability of name (free search facility is available on MCA portal )

Reserve the name through web –service RUN-LLP (Name reserved shall be valid for a period of 3 months )

OR

Through Form FiLLip (only one proposed name is allowed)

## File with Registrar

- Incorporation document and subscribers' statement through Form FiLLip
- LLP Agreement can be filed within 30 days of incorporation
- Proof of address of registered office along with registration fee

ROC scrutinizes and on satisfaction issues the **certificate of Incorporation in Form 16**. ROC assigns LLPIN for every LLP which is registered.

## Roc if not satisfied

- Gives 15 days time to remove defects or deficiencies and allows resubmission
- Another opportunity for re-submission is also given

# LLP AGREEMENT

LLP Agreement refers to the written agreement between the partners of the limited liability partnership or between the LLP and its partners which determines the mutual rights and duties in relation to that LLP (sec. 2(1)(o))

## **Contents of LLP Agreement**

- ❖ Name of LLP.
- ❖ Name and address of partners and designated partners.
- ❖ Form of contribution and interest on contribution.
- ❖ Profit sharing Ratio.
- ❖ Remuneration of partners.
- ❖ Rights and duties.

# LLP AGREEMENT

- ❖ Restrictions if any on the partners' authority.
- ❖ Proposed business.
- ❖ Information relating to the duration of LLP
- ❖ Rules relating to the management and administration of LLP



# WHAT IS AN INCORPORATION DOCUMENT? (SEC. 11)



(1) For a limited liability partnership to be incorporated,--

- a) two or more persons associated for carrying on a lawful business with a view to profit shall subscribe their names to an incorporation document;
- b) the 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 registered office of the limited liability partnership is to be situated; and
- c) there shall be filed along with the incorporation document, a statement in the prescribed form, made by either an advocate, or a Company Secretary or a Chartered Accountant or a Cost Accountant, who is engaged in the formation of the limited liability partnership and by any one 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.

(2) The incorporation document shall-

- a) be in a form as may be prescribed
- b) state the name of the limited liability partnership;
- c) state the proposed business of the limited liability partnership;
- d) state the address of the registered office of the limited liability partnership;

# INCORPORATION DOCUMENT

e) state the name and address of each of the persons who are to be partners of the limited liability partnership on incorporation;

f) state the name and address of the persons who are to be designated partners of the limited liability partnership on incorporation;

g) contain such other information concerning the proposed limited liability partnership as may be prescribed.

(3) If a person makes a statement under clause (c) of sub-section (1) 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 two years and with fine which shall not be less than ten thousand rupees but which may extend to five lakh rupees

# EFFECT OF REGISTRATION (SEC.14)

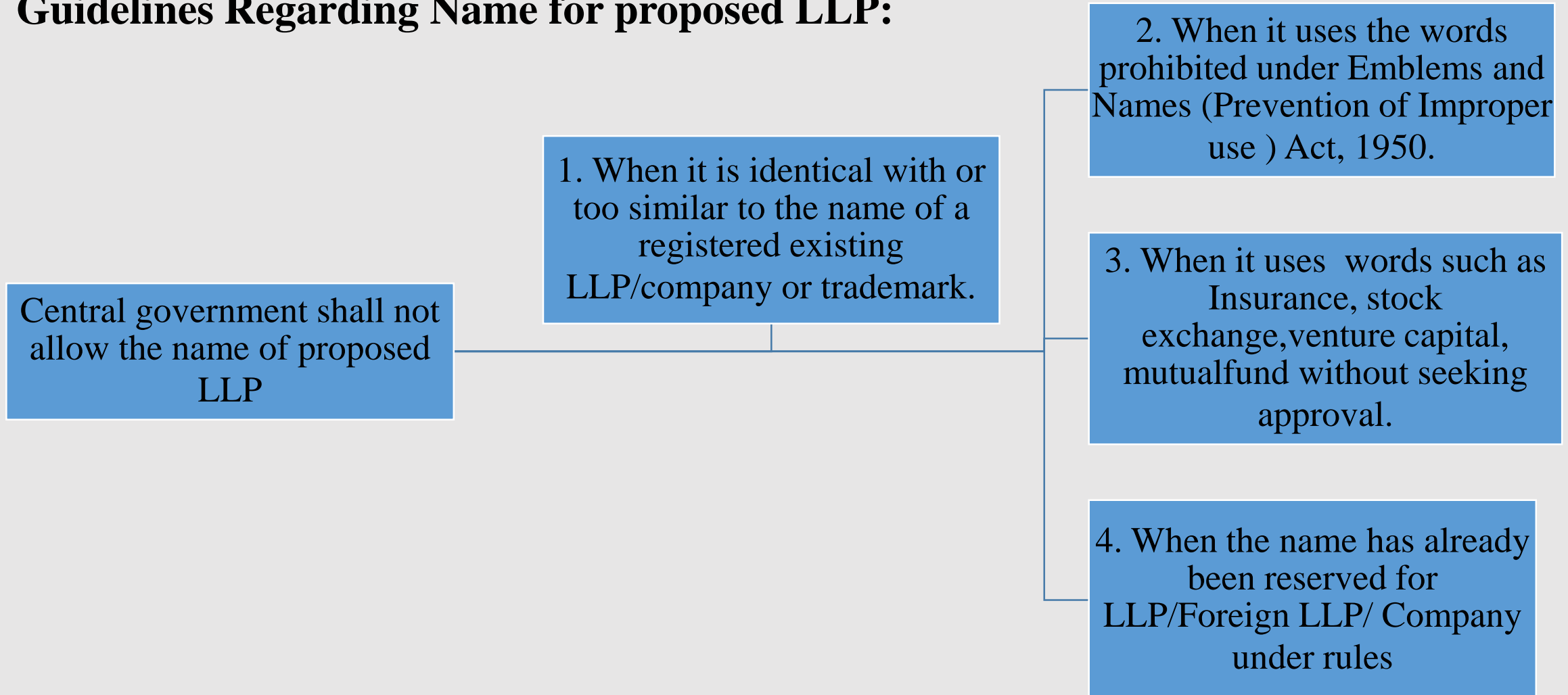
On registration, a limited liability partnership shall, by its name, be capable of

- suing and being sued;
- 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; and
- doing and suffering such other acts and things as bodies corporate may lawfully do and suffer.

# PROVISIONS RELATING TO NAME OF LLP AND CHANGES THEREIN

1. Last words of approved name shall have either the words “Limited liability partnership” or the acronym “LLP”.

## 2. Guidelines Regarding Name for proposed LLP:



# PROVISIONS RELATING TO NAME OF LLP AND CHANGES THEREIN

3. Two names in order of preference shall be proposed through RUNN-LLP and one name in case FiLLip.

## 4. Change of Name of LLP

Voluntarily

- As per the procedure laid down in the LLP agreement.
- If the agreement is silent then with the consent of all partners.

Notice of change to registrar through Form 5 within 30 days along with fee.

# PROVISIONS RELATING TO NAME OF LLP AND CHANGES THEREIN

As per direction of CG

When CG feels name is not as per guidelines

- Direction to be complied within 3 months

Penalty for non compliance

- **LLP : Rs 10,000-rs 5Lakhs**
- **Designated partners: Rs 10,000- Rs 1 Lakh**

On direction by ROC

On request by another entity received by ROC within 24 months of registration of the LLP

# PENALTY FOR IMPROPER USE OF WORDS "LIMITED LIABILITY PARTNERSHIP" OR "LLP" (Sec. 20)

- If any person or persons carry on business under any name or title of which the words "Limited Liability Partnership" or "LLP" or any contraction or imitation thereof is or are the last word or words, that person or each of those persons shall, unless duly incorporated as limited liability partnership, be punishable with fine **which shall not be less than fifty thousand rupees but which may extend to five lakh rupees.**



# PUBLICATION OF NAME AND LIMITED LIABILITY (SEC. 21)

- (1) Every limited liability partnership shall ensure that its invoices, official correspondence and publications bear the following, namely:-
- (a) the name, address of its registered office and registration number of the limited liability partnership; and
  - (b) a statement that it is registered with limited liability
- 2) Any limited liability partnership which contravenes the provisions of sub-section (1) shall be punishable with fine which shall not be less than two thousand rupees but which may extend to twenty-five thousand rupees

# REGISTERED OFFICE OF LIMITED LIABILITY PARTNERSHIP AND CHANGE THEREIN (Sec.13)

- 1) Every limited liability partnership shall have a registered office to which all communications and notices may be addressed and where they shall be received.
- 2) A document may be served on a limited liability partnership or a partner or designated partner thereof by sending it by post under a certificate of posting or by registered post or by any other manner, as may be prescribed, at the registered office and any other address specifically declared by the limited liability partnership for the purpose in such form and manner as may be prescribed.
- 3) A limited liability partnership 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.
- 4) If the limited liability partnership contravenes any provisions of this section, the limited liability partnership and its every partner shall be punishable with fine which shall not be less than two thousand rupees but which may extend to Rs 25000.

THANK YOU