

# Limited Liability Partnership

**Presented by**

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# Background of Limited Liability Partnership Act

With the growth of the Indian economy, the role played by its entrepreneurs as well as its technical and professional manpower has been acknowledged internationally. It is felt opportune that entrepreneurship, knowledge and risk capital combine to provide a further impetus to India's economic growth.

In this background, a need has been felt for a new corporate form that would provide an alternative to the traditional partnership, with unlimited personal liability on the one hand, and, the statute-based governance structure of the limited liability company on the other, in order to enable professional expertise and entrepreneurial initiative to combine, organize and operate in flexible, innovative and efficient manner.

# Indian History

- **2003: Naresh Chandra Committee** Report highlighted need for LLPs & suggested application of LLPs to Service industry, Chartered Accountants, Lawyers, Architects, etc.
- **2005: J J Irani Expert Committee** on Company Law recommended introduction of LLPs-suggested small enterprises be included in scope of LLP & there should be a separate LLP Act
- **2006: LLP Bill introduced** in Parliament
- **2007: Bill referred** to Parliamentary Standing Committee (**PSC**) for **examination**
- **2008: Lok Sabha passes** New LLP Bill as revised by PSC
- **2009: LLP Act, 2008 receives presidential assent** & is **published** in Official Gazette
- **2009: LLP Act, 2008 gets notified** w.e.f March 31<sup>st</sup>, 2009
- **2100 LLPs registered till 24.08.2010**

# LLP in foreign countries

The LLP structure is available in countries like **United Kingdom, United States of America, various Gulf countries, Australia and Singapore**. On the advice of experts who have studied LLP legislations in various countries, the **LLP Act** is broadly **based on UK LLP Act 2000 and Singapore LLP Act 2005**. Both these Acts allow creation of LLPs in a body corporate form i.e. as a separate legal entity, separate from its partners/members.

# Structure of Limited Liability Partnership

- LLP is body corporate formed & incorporated under LLP Act [S. 3 (1)]
- LLP is legal entity separate from its partners [S. 3 (1)]
- LLP has perpetual succession [S. 3 (2)]
- Existence, Rights & Liabilities of LLP not affected by change in partners [S. 3 (3)]
- Indian Partnership Act, 1932 does not apply to LLPs [S. 4]
- Partners
  - Individuals / Body Corporate can be partners [S. 5]
  - Minimum two partners [S. 6 (1)]
  - Maximum unlimited partners

# Structure of Limited Liability Partnership....

- Designated Partners (DP) [S. 7 (1)]
  - At least two DPs
  - Only Individuals can be DPs – Can be nominees of Body corporate partner/s
  - At least one resident in India
  - Every DP to obtain a Designated Partner Identification No. (DPIN)
- Responsibilities & Liabilities of DPs [S. 8]
  - Responsible for doing all acts, matters & things required to be done by LLP w.r.t compliance of LLP Act including filing of any document, return, statement & like report under LLP Act & as specified in LLP Agreement
  - Liable to all penalties imposed on LLP for any contravention of above

# Incorporation & Incidental Matters

- Incorporation Document [S. 11]
  - Is among Prime Documents of LLP
  - Must be submitted to registrar in 'Form-2' [R. 11]
  - S. 11 (2) requires particular information to be contained in Incorporation Document-
    - Name of LLP
    - Proposed Business of LLP
    - Address of Registered Office (RO)
    - Names & Addresses of Partners
    - Names & Addresses of DPs
    - Other Information as may be prescribed

# Incorporation & Incidental Matters

- Procedure for formation of LLP:
  - Check availability of name on site '[llp.gov.in](http://llp.gov.in)'
  - Acquire Digital Signature Certificate (DSC)
  - Acquire DPIN by applying in prescribed 'Form-7'
  - Apply for Reservation of Name in prescribed 'Form-1'
  - Apply for Incorporation Document in prescribed 'Form-2'
  - Alongwith Incorporation Document, submit application for-
    - Information regarding LLP Agreement in 'Form-3'
    - Appointment of Persons and their consent as such to act as Partners / DPs in 'Form-4' & 'Form-9', respectively
  - Receive Form-2 duly signed by Registrar & certificate from registrar regarding incorporation, within 14 days of filing such documents
  - LLP is ready to function



# Incorporation & Incidental Matters

## How to Acquire DSC ?

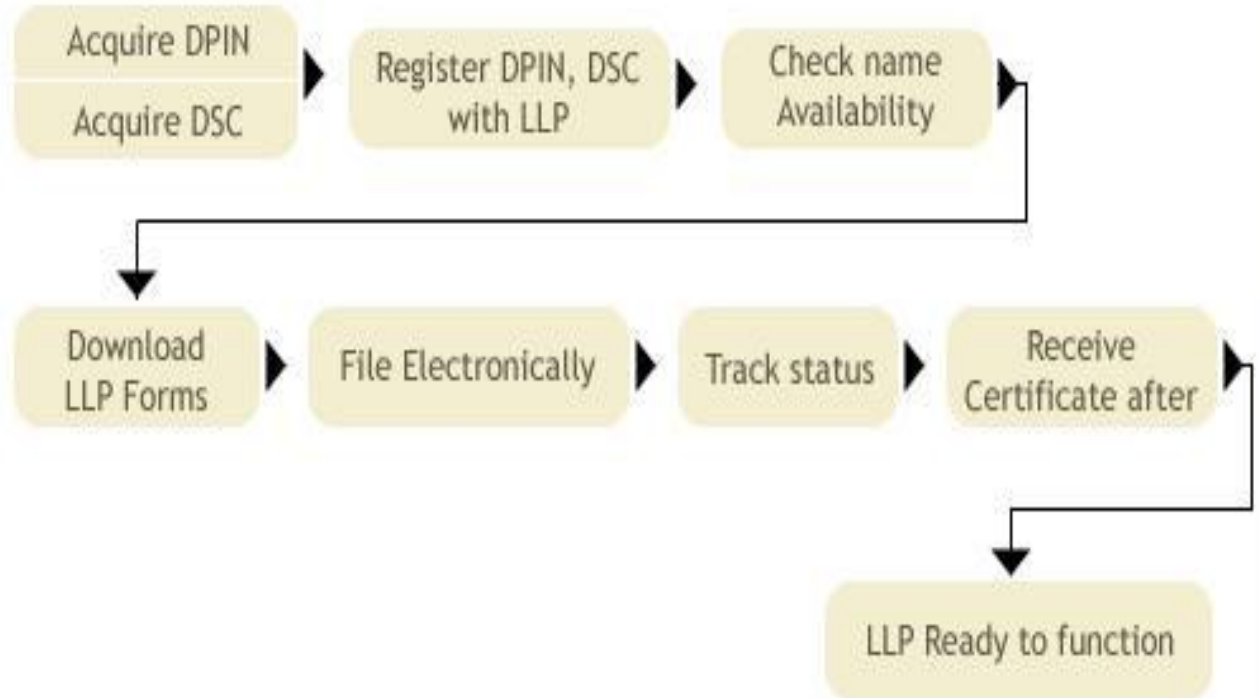
### Registrar's Notice Board

Limited Liability Partnership Act  
2008 notified on 31.03.2009

Limited Liability Partnership  
Rules 2009 notified on  
01.04.2009

First LLP registered on  
02.04.2009

## Process to Start LLP



# Advantages of LLPs

- LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership.
- The LLP is capable of entering into contracts and holding property in its own name.
- The LLP is a separate legal entity, is liable to the full extent of its assets but liability of the partners is limited to their agreed contribution in the LLP.
- Further, no partner is liable on account of the independent or unauthorized actions of other partners, thus individual partners are shielded from joint liability created by another partner's wrongful business decisions or misconduct.
- Mutual rights and duties of the partners within a LLP are governed by an agreement between the partners or between the partners and the LLP as the case may be.

# Advantages of LLPs.....

- LLP form is a form of business model which:
  - (i) is organized and **operates on the basis of an agreement.**
  - (ii) provides **flexibility without imposing detailed legal and procedural requirements**
  - (iii) enables professional/technical expertise and initiative to combine with financial risk taking capacity in an innovative and efficient manner
- Effect of Registration [S. 14]: LLP will be able to, in its own name-
  - Sue & be sued
  - Acquire, hold & develop or dispose off any property
  - Have common seal
  - Do & suffer such other acts & things as bodies corporate may lawfully do or suffer

# Comparison with Partnership Firms

<b>Basis</b>	<b>Partnership Firms</b>	<b>LLP</b>
<b>Governing Law</b>	Partnership Act, 1932	Limited Liability Partnership Act, 2008
<b>Registration</b>	Not Compulsory; but is preferred	Compulsory
<b>Creation</b>	By partnership Agreement	By Law
<b>Legal Status</b>	Partners collectively known as 'Firm'; no separate legal status	LLP has separate legal status apart from partners
<b>Succession</b>	Firm would cease to exist on change in partnership, unless otherwise provided in agreement	LLP would not be affected on change in partnership (Perpetual Succession)
<b>Ownership of Assets</b>	Partnership cannot own assets in its name; assets must be in name of Partners	LLP can own assets in its own name
<b>Liability of Partners</b>	Unlimited	Limited
<b>Minor's Position</b>	Minor can be admitted to benefits of Partnership	Law silent on position of Minors

# Comparison with Companies

<b>Basis</b>	<b>Company</b>	<b>LLP</b>
<b>Governing Law</b>	Companies Act, 1956	Limited Liability Partnership Act, 2008
<b>Name</b>	Must contain suffix 'Ltd' or 'Pvt Ltd'	Must contain suffix 'LLP'
<b>Common Seal</b>	Common Seal is compulsory	Common Seal is optional
<b>Organizational Structure</b>	Rigid & governed by Companies Act	Flexible & governed by LLP Agreement
<b>Appointment of Auditors</b>	Specific Resolution required for appointment of auditors at every AGM	Auditors shall be deemed to be re-appointed in case no specific appointment is made (unless otherwise decided)
<b>Audit</b>	All companies are subject to audit of accounts	Only LLPs having turnover of more than Rs. 60 Lacs or contribution of more than Rs. 25 Lacs are subject to audit of accounts

# Taxation of LLPs

- Tax treatment of LLPs to be same as that of 'Partnership Firms'
- S. 2 (23) of Income Tax Act, 1961 (IT Act) to include 'LLP' & its 'Partners'
- Partner's share of profit will be exempt [S.10 (2A) of IT Act]
- Partner's remuneration will be subject to newly proposed limits-

Slab of Book Profit	Remuneration Allowable
On first Rs. 3 lacs or in case of loss	Rs. 1.5 lacs or 90% of book profits, whichever is higher
On balance of book profit	60% of book profits

## Tax implications on conversion of partnership firm to LLP

- As a LLP & a general partnership firm is being treated as equivalent (except for recovery purposes) in the Act, the conversion from a general partnership firm to LLP will have no tax implications if:
  - the rights and obligations of the partners remain the same after conversion &
  - if there is no transfer of any asset or liability after conversion

# Taxation on Conversion from Cos. To LLPs

Tax on Conversion of Cos to LLPs [Ss. 32, 35DDA, 43, 47, 49, 72A & 115JAA]

- Finance Act, 2010 exempts conversion of Private or Unlisted Public Cos to LLP from Capital Gains Tax subject to following conditions:
  - All assets & liabilities of co. are taken over by LLP
  - All shareholders of co. become partners of LLP
  - Their Capital Contribution & P S R in LLP are in same proportion as their shareholding in Co.
  - Shareholders of co. do not receive any consideration on conversion other than share in Profit & Capital Contribution in LLP
  - Total of PSR of Shareholders of Co., in LLP should not fall below 50% for 5 consecutive years from conversion date
  - Total sales, Turnover or Gross Receipts of Co. should not have exceeded Rs.60 Lakh in any of 3 years preceding year of conversion
  - Partners are not paid any amount from accumulated profits of Co. for 3 years from conversion date.
  - If any of above conditions are not satisfied subsequently, such conversion shall be chargeable to tax in hands of LLP in year of non-compliance

If aforesaid 6 conditions fulfilled, following benefits are granted:

- LLP to continue to enjoy deduction of VRS expenses u/s. 35DDA
- C/F business loss (other than speculative loss) & unabsorbed dep of co. deemed to be loss or dep allowance of LLP of year of conversion & shall be allowed to be set-off / carry forward in the hands of LLP- u/s. 72A
- Such c/f business loss or unabsorbed depreciation to be taxable in LLP in year of non-compliance with any of 6 conditions
- LLP not entitled to carry-forward & set-off any MAT Credit which was available to co.
- 'Cost of Acquisition' & 'WDV' of depreciable assets & 'Cost of Acquisition of other capital assets' in hands of LLP shall be same as they were in hands of co.
- Deprecation pre-conversion will be allowed to predecessor-co. & post-conversion to LLP & aggregate of depreciation allowable to Co. & LLP not to exceed that as would have been allowed had conversion not taken place

[w.e.f. 1-4-2011]



# Taxation Not Applicable to LLPs

- Provisions in IT Act, 1961 relating to companies are not applicable to LLPs:
  - LLPs not liable to DDT u/s 115-O
  - LLPs not liable to MAT u/s 115JB
  - Deemed Dividend u/s 2 (22) (e) is not applicable
  - S. 79 on 'Carry forward & Set-off of Losses in certain cases' is not applicable
- LLPs not liable to pay surcharge on income tax like firms

**Thank You !!!**

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