

# Limited Liability Partnership



“Emerging Corporate Form”

# Overview of Limited Liability Partnership

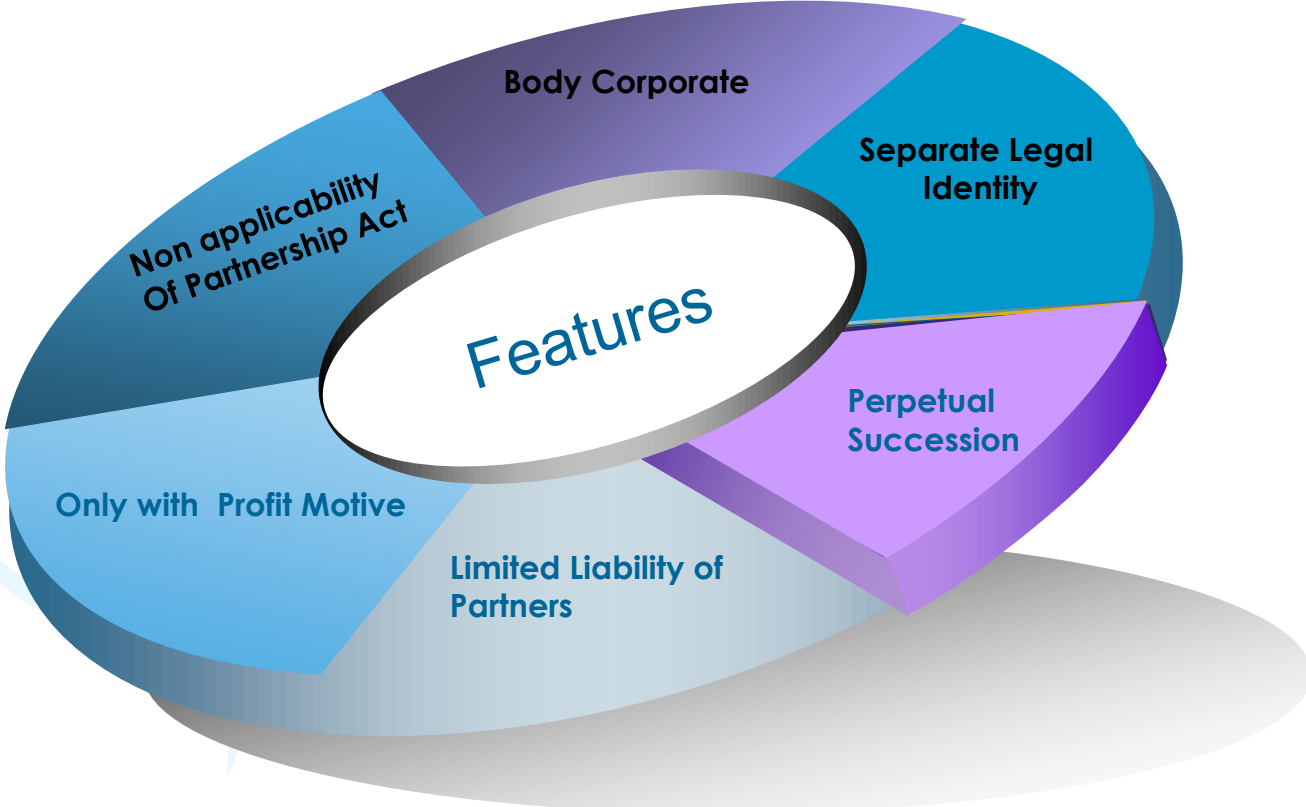
- ❑ LLP Act, 2008 passed by Lok Sabha on 12<sup>th</sup> of December 2008 and the President gave assent to the Bill on 7<sup>th</sup> January 2009.
- ❑ LLP Rules, 2009 Notified on 01st of April 2009.
- ❑ Constituent of LLP Act, 2008
  - 81 Section
  - 4 Schedules
  - 29 Forms
- ❑ Out of 81 Sections, 75 Sections were so far Notified (Except provisions on Winding up and dissolution).
- ❑ Out of Four Schedules, Schedule 1 defines the Mutual Rights and Liabilities of the Partner, in the absence of any matter in LLP Agreement\_ and other schedules prescribes provisions relating to conversion.



# What is Limited Liability Partnership?

- ❑ Hybrid of Corporate & Partnership business Form.
- ❑ Limits liability of partners to the extent of their contribution.
- ❑ provides flexibility without imposing detailed (and costly) legal and procedural requirements. The organization and operations are on the basis of an mutual agreement.

# Features of LLP



# Benefits as Compared to Partnership Firm

Ω **Unlimited No. of Partners**

Ω **Limited Liability of Partners**

Ω **LLP is liable to the extent of assets.**

Ω **No Liability of a partner for the wrongful act of other partner.**

Ω **No exposure to the personal assets of partners except in case of fraud.**

# Benefits as Compared to Corporate Form

- Ω Easy to Form, Run and manage.
- Ω Internal structure and governance through mutual agreement.
- Ω No Minimum Contribution
- Ω Less Government Intervention
- Ω Less requirement as to maintenance of statutory records
- Ω Less Compliances
- Ω Taxation (Income Tax) of LLP will be like general partnership.
- Ω No wealth Tax.

# Key Concepts of **LLP**

- Partners & Designated Partners
- Contribution
- Role of Partner
- Liability of Partner
- Formation & Conversion
- Compliances of LLP
- Foreign LLP
- Reservation of Name by Foreign LLP/Foreign Company
- Compromise & Arrangement
- Dissolution & Winding up
- Taxation of LLP

# LLP Act-New Features



- ❑ **Mandatory imprisonment with penalty** for false statement, fraud and non-compliance of order of Tribunal/CLB/Court [(Section-11(3),37,30,73)].
- ❑ **Un-limited Liability of Partners and LLP** in event of business are carried out with intent of defraud its creditors or third parties (Sec-30).
- ❑ Waiver of penalties and protection against future vindictive action to **whistle blowers** (Sec-31).
- ❑ LLP is liable to third party to the extent of credit received by it or any financial benefit derived on falsely **holding out** of a person as partner of LLP (Sec-29).
- ❑ Central Govt. by Notification may **apply/extend any provisions of Companies Act, 1956** (With or without modifications) to LLPs.

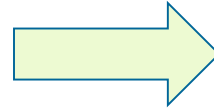


# Partners & Designated Partners

- ❑ Any Individual or/and body corporate may be partner.  
(A foreigner can be partner of a LLP in India).
  
- ❑ Body Corporate means company as defined under section 3 of the companies Act, 1956 and includes
  - Limited liability partnership registered under LLP Act
  - Limited Liability Partnership incorporated outside India and
  - Company incorporated outside India
  
- ❑ Designated partner : -
  - Every LLP shall have at least two designated partners who are individuals and at least one of them shall be resident in India.
  - Responsible for managing the day to day affairs and ensuring the compliances of all applicable laws.
  
- ❑ Requirements for Designated Partners : -
  - Designated Partner identification Number (DPIN)
  - Only Individual can be the Designated Partners.
  - At least One Designated partner should be resident of India.
  - In case of Body corporate their nominees can be the Designated Partners.

## Contribution

Share Capital



Contribution

- Each partner shall bring contribution in LLP and nature & amount shall be disclosed in the Accounts of LLP.
- Contribution can be in tangible, movable, immovable or intangible Form.
- In case of “tangible/Intangible (other than cash) Form of contribution” or “contribution by way of service contract” it shall be valued by a practicing Chartered Accountant/Cost Accountant/Approved Valuer.

## Role/ Rights of Partner

- ❑ Right to participate in Management
- ❑ For Business Purposes Agent of Limited Liability Partnership, not of other Partners.
- ❑ Ethical duty to comply with all provisions of LLP Act and LLP Agreement.

## Liability of Partners

- ❑ Limited to the Extent of their Contribution
- ❑ Not Liable for the wrongful Acts /Omissions of other Partners
- ❑ Not Liable for Obligation of LLP arising out of a contract.
- ❑ Unlimited Liability of Partners in case of Fraud.

# Formation of **LLP**

I - Deciding the Partners & Designated partners

II - Obtaining DPIN (Form-7) & Digital Signature

III - Reservation of Name for LLP (Form-1)

IV - Filing of Incorporation Document (Form-2)

V - Certificate of Incorporation

VI – Filing of LLP Agreement (Form-3)

VII – Filing of Consent of partners/Designated partners (Form-4)



# Step I Incorporation

## Deciding the Partners & Designated partners

### Parameters for deciding the Partners and Designated Partners:

- ❑ At least 2 Partners - Individuals or Body Corporate
- ❑ Minimum Two Designated Partners out of total no. of Partners – Individuals or Nominee of Body Corporate.
- ❑ At least One Designated Partner to be Resident of India.



## Step II Incorporation

### Obtaining DPIN (Form-7) & Digital Signature

- ❑ DPIN – Designated Partner Identification Number
- ❑ DPIN - 8 digit Numeric Number
- ❑ DPIN vs DIN
- ❑ Online application in Form 7 to Central Government
- ❑ Submission of the physical application along with Identity and Address Proof of applicant.

## Step III Incorporation

### Reservation of name Availability for LLP (Form-1)

- The word 'LLP' or 'Limited Liability partnership' shall be the last word of name.
- Not to be identical or too nearly resembles to any other partnership firm, LLP, Body Corporate and trade mark. (Section-15)
- Not to be Prohibited under Emblems '**Emblems and Names (Prevention of Improper use) Act, 1950** and **Rule-18**.
- If business includes banking, stock exchange, NBFCs activities, chit funds, micro finance (offering small loans/contribution from public, collective investment scheme, a copy of in principle approval of appropriate authority to be obtained.
- e Form 1 to be filed with ROC.

## Step IV Incorporation

### IV - Filing of Incorporation Document (Form-2)

- ❑ e Form 2 – Incorporation Document along with Subscription Sheet and proof of address of registered office of LLP.
- ❑ Total incorporation fees

Contribution up to 1 lakh	Fee	Contribution More than 10 lakh	Fee
Form 1 (Name Availability)	200	Form 1 (Name Availability)	200
Form 2 (Incorporation Document)	500	Form 2 (Incorporation Document)	5000
Form 3 (LLP Agreement Registration)	50	Form 3 (LLP Agreement Registration)	200
Form 4 (Partners Consent)	50	Form 4 (Partners Consent)	200
Incorporation Fee	800	Incorporation Fee	5600



## Step V Incorporation

### V - Certificate of Incorporation

- ❑ On Successful Compliances – Registrar Issues Certificate of Incorporation.
- ❑ Conclusive Evidence of Registration of Limited Liability Partnership



## Step VI Incorporation

### VI - Registration of LLP Agreement

- Execution of LLP Agreement is mandatory (Section-23).
- In absence of Agreement as to any matter, Schedule 1 will be applicable.
- Filing of details of LLP Agreement through e Form 3 – within 30 days of Incorporation.
- Stamp duty on LLP agreement to be paid as per State Stamp Act.
- Under Income Tax, interest paid and remuneration or commission paid to partners will be allowed as deduction if payment is authorized by written LLP Agreement.



## Features of Schedule 1

- All partners entitled to share equally in the Capital and Profits/losses.
- Indemnity to the partners on personal liability in proper conduct of business.
- Every Partner shall take part in management
- No partner shall be entitled to remuneration.
- No partner introduced without consent of all partners.
- All decisions with majority of partners consent
- Minutes to be recorded within 30 days
- Render True Accounts
- All Disputes will be referred to Arbitration Act

# Compliances of LLP With Registrar

- **EVENT BASED**

**Form-3, Form-4, Form-5,  
Form-15**



- **REGULAR**

**Form-8 and Form-11**

# Event Based Compliances of LLP

<b>Compliance</b>	<b>Section</b>	<b>e-form</b>	<b>Time Limit</b>
<b>Filing of Consent of Designated Partners</b>	<b>7(3)</b>	<b>Form 4</b>	<b>Within 30 days of incorporation or subsequent appointments</b>
<b>Filing of Change in Partners</b>	<b>25(2)</b>	<b>Form 3 and Form 4</b>	<b>Within 30 days of Change</b>
<b>LLP Agreement &amp; Changes therein</b>	<b>23(2)</b>	<b>Form 3</b>	<b>With in 30 days of incorporation or Changes in LLP Agreement</b>
<b>Shifting of Registered Office</b>	<b>13(3)</b>	<b>Form 15</b>	<b>Within 30 days of Compliance</b>
<b>Change of Name</b>	<b>19</b>	<b>Form 5</b>	<b>Within 30 days of Compliance.</b>

- ❑ **Additional Fees** for delay filing of Form - Rs. 100 per day upto 300 days.
- ❑ Delay Filing of the Form beyond 300 days will attract additional fees and action against LLP and Designated Partners under the Act.

# Regular Compliances of LLP

- ❑ Maintenance of proper Books of Accounts on cash basis or on accrual basis and according to the Double Entry System of Accounting.
- Maintained at registered office and preserved for at least 8 years.
- Audit of Accounts in accordance with the Rules prescribed.
- ❑ Form-8 (Filing of Statements of Accounts & Solvency) – Within 30 days from the end of 6 months from the closure of Financial Year.
- ❑ Form-11 (Filing of Annual Return) – within 60 Days of closure of Financial Year

# Conversion of **LLP**

## Who can Convert ?

- Partnership Firm
- Private Company
- Unlisted Public Company



# Procedure of Conversion of Company/Firm to **LLP**



VII - Intimation of Conversion to ROC (Form 14)

VI - Certificate of Conversion into LLP (Form 19)

V - Filing of Conversion Application (Form 17/18)

IV- Filing of Incorporation Document (Form-2)

III – Reservation of Name for LLP (Form-1)

II - Obtaining DPIN & Digital Signature

I - Deciding the Partners & Designated Partners



# Important Considerations for conversion **LLP**

- **Filing of Form with registrar of LLP:-**
  - **Form-7 & Form1 and**
  - **Form-17/18 & Form-2 (with mandatory attachments)**
- **All the Members of the Company/partners of the firm shall be the Partners in LLP (and no one else) with the same capital/contribution ratio.**
- **Consent of all Members of the Company/partners of the firm shall be obtained.**
- **No security interest on the assets shall be subsisting or in force on the date of application.**
- **NOC from Unsecured creditors.**
- **Statement of Assets and Liabilities certified by Auditor of not more than 30 days prior to the date of the conversion application.**
- **All due returns of ROC, Income Tax and other Tax authorities shall be filed.**
- **NOC from other authority for conversion, if required.**
- **After receiving Conversion Certificate the same to be filed within 15 days with the Registrar of Companies in **Form 14** .**

# Foreign LLP [LLP Incorporated Outside India (LIOI)]



Section 59 of LLP Act, 2008 contain provisions regarding establishment of the place of business by Foreign Limited Liability Partnership within the India for carrying on their business.

- ❑ **Filing of Form-27** within 30 days from establishment of place of business in India.
- ❑ Permission/approval of Reserve Bank of India (RBI) required for establishment of place of business in India.
- ❑ Filing fees for Form-27 - Rs.5000/-
- ❑ Compliance of special Act, If the business is regulated by special Act.

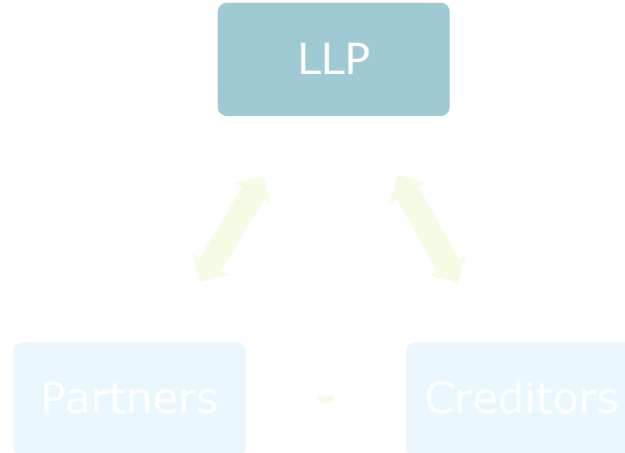


# ❑ Reservation/Renewal of Name by Foreign LLP/Foreign Company



- ❑ Foreign LLP/Foreign Company can reserve its existing name by which it is registered in the Foreign Country.
- ❑ **Form-25** is to be filed with the fees of Rs.10,000/-
- ❑ Reservation of name valid for 3 years.
- ❑ Renewal of name is possible by filing fresh Form-25 on payment of fees Rs.5,000/-.

# Compromise & Arrangement



- ❑ Application is to be made to Tribunal by LLP or creditor or partners for compromise or arrangements. In case of LLP is under winding up, the application can be made by the liquidator.
- ❑ Tribunal orders for meeting of creditors or partners for decision/resolution by 3/4<sup>th</sup> in value of creditors or partners agreeing to any compromise or arrangement.
- ❑ Tribunal may order sanctioning a compromise or an arrangement.
- ❑ Till the time tribunal is constituted application will be made to High Court.

# Winding up of **LLP**

- ❑ Alike Companies, LLP may be wound up either **Voluntary** or by the **Order of Tribunal**.
- ❑ The Rules for winding up is yet to be notified by C.G.



# Taxation LLP (as per the Finance Act, 2009)

- Ω Profit will be taxed in hand of the LLP and not in the hands of Partners w.e.f assessment year 2010-11.
- Ω Remuneration to partners will be taxed as their “income from business & profession”.
- Ω No Surcharge will be levied on income tax.
- Ω No Minimum Alternate Tax and dividend distribution tax
- Ω No Capital gain on conversion of partnership firm into LLP
- Ω Designated partners will liable to sign and file Income Tax return

# Merits of LLP (as business model for SMEs and service providers)

- Ω Separate legal entity & body corporate.
- Ω Low compliance burden & cost.
- Ω Limited Liability of partners.
- Ω LLP is liable to the extent of its assets.
- Ω More flexibility than company.
- Ω Right of partners can be assigned to third party.
- Ω Availability of solvency position in public domain increases the credit worthiness.
- Ω Allows Multi-disciplinary professionals combination which provides level playing field against their international professional firm.
- Ω Easy to exit/ winding up.
- Ω Venture capital funds can combined with knowledge and expertise.
- Ω Taxation benefits as compare to company.



**Thank You**