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"Tulsian's Business Laws"

by P.C. Tulsian & Bharat Tulsian

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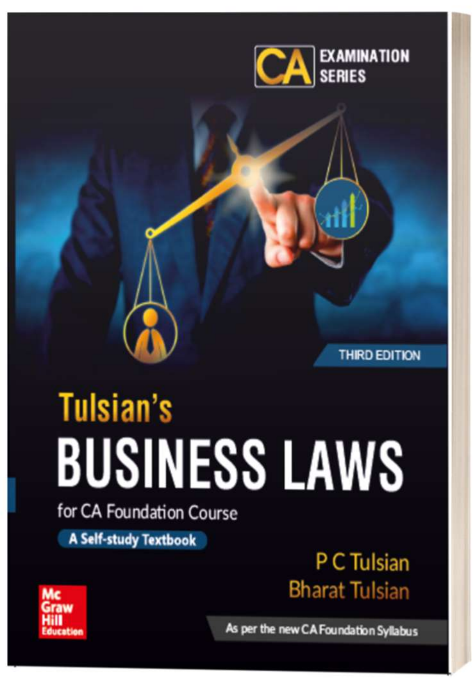

14 The Limited Liability Partnership Act, 2008

1.0 INTRODUCTION

1. The Limited Liability Partnership Act, 2008 was published in the Official Gazette of India on January 9, 2009 and has been notified with effect from 31st March 2009. However, the Act, has been notified with limited sections only. The rules have been notified in the Official Gazette on April 1, 2009. The first LLP was incorporated in the first week of April 2009.
2. It extends to the whole of India.
3. The LLP Act, 2008 has 81 Sections and 4 Schedules.

   The First Schedule deals with mutual rights and duties of partners, as well limited liability partnership and its partners where there is absence of formal agreement with respect to them.

   The Second Schedule deals with conversion of a firm into LLP.

   The Third Schedule deals with conversion of a private company into LLP

   The Fourth Schedule deals with conversion of unlisted public company into LLP.
4. The Ministry of Corporate Affairs (MCA) and the Registrar of Companies (ROC) are entrusted with the task of administrating The LLP Act, 2008.
5. The Central Government has the authority to frame the Rules with regard to The LLP Act, 2008, and can amend them by notifications in the Official Gazette, from time to time.
6. The Indian Partnership Act, 1932 is not applicable to LLPs.

NEED FOR LIMITED LIABILITY PARTNERSHIP

A need was felt for a new corporate form that could provide the benefits of limited liability of a company and the flexibility of a traditional partnership to its members in organizing their internal structure based on a mutual agreement. Hence,a concept of LLP was introduced which combines the elements of both ‘a corporate structure’(i.e. limited liability) as well as ‘a partnership firm structure’(i.e. flexibility).The LLP is a separate legal entity and, while the LLP itself will be liable for the full extent of its assets, the liability of its partners will be limited.

LLP framework could be used for many Professionals and enterprises, such as:

1. Professionals and enterprises providing multidisciplinary services of any kind (Legal, Accounting,Taxation,Scientific, Technical or Artistic) such as Chartered Accountants

(CA), Cost and Management Accountants (CMA), Company Secretaries (CS) and Advocates,where corporation form of entity is not suited.

2. Venture Capital Funds where risk capital combines with knowledge and expertise.
3. Professionals and enterprises engaged in any scientific, technical or artistic discipline, for any activity relating to research, production, design and provision of services.
4. Small Sector Enterprises
5. Producer Companies in Handloom, Handicrafts sector.

2.0 MEANING AND FEATURES OF LIMITED LIABILITY PARTNERSHIP

MEANING OF LIMITED LIABILITY PARTNERSHIP

Limited Liability Partnership means a partnership formed and registered under this Act. [Sec 2(1) (n)]

FEATURES OF LIMITED LIABILITY PARTNERSHIP

1. **Body Corporate:** A Limited Liability Partnership is a body corporate formed and incorporated under this Act.
2. **Separate Legal Entity:** It is a legal entity separate from that of its partners.
3. **Perpetual Succession :** It has perpetual succession. Any change in the partners of a Limited Liability Partnership shall not affect the existence, rights *or* liabilities of the limited liability partnership.
4. **Limited Liability:** The liability of the partners will be limited to their agreed contribution in the LLP.
5. **Minimum and Maximum number of Partners:** Every LLP must have least 2 partners and must also have at least 2 individuals as designated partners, of whom at least one shall be resident in India. There is no maximum limit on the partners in LLP.
6. **Business for Profit Only:** The LLP can be formed only for carrying on a lawful business with a view to earn profit. Thus, LLP cannot be formed for charitable or non-economic purpose.
7. **LLP Agreement:** Mutual rights and duties of the partners within a LLP are governed by an agreement between the partners. In the absence of any such agreement, the mutual rights and duties shall be governed by the provisions of The LLP Act, 2008.
8. **An Artificial Person Created by Law:** LLP is called an artificial person because it does not take birth like a natural person but comes into existence through law. It may be noted that the LLP is an artificial legal person and not a fictitious person.

   Like a natural person—

   (a) LLP can enter into contracts.

   (b) LLP can enforce the contractual rights against others.

   (c) LLP can sue in its own name.

(d) LLP can be sued in its own name.
(e) LLP can own and hold property in its own name.
(f) LLP has nationality. The registration of a company in a country determines the nationality of that LLP to that country.
(g) LLP has its own rights and liabilities.

Unlike a natural person—

(a) LLP has no physical shape or form.
(b) LLP can not shake by hand.
(c) LLP can not marry.
(d) LLP can not smile or weep.
(e) LLP can not take oath.
(f) LLP can not commit a crime like murder.
(g) LLP has no citizenship because a citizen of a country is a personal right peculiar to human beings only.

9. **Non- Applicability:** The provisions of The Indian Partnership Act, 1932 (9 of 1932) shall not apply to a LLP unless otherwise provided.

3.0 ADVANTAGES OF LLP FORM

The Advantages of LLP form are as follows:

1. **Limited Liability:** Liability of Partner is limited, to the extent their contribution towards LLP, except in case of intentional fraud or wrongful act of omission or commission by the partner.
2. **Flexibility:** LLP provides flexibility of a traditional partnership to its members in organizing their internal structure based on a mutual LLP Agreement.
3. **Separate Legal Entity :** LLP has separate legal entity.
4. **Perpetual Succession:** LLP has perpetual succession. The death, insolvency or unsoundness of its members does not affect its existence. Members may come and go but LLP goes forever.
5. **Easy to Form:** The formation of LLP is much easier than that of a Company.
6. **Easy to Dissolve:** The dissolution of LLP is much easier than that of a Company.
7. **Foreign National:** Foreign National can become a Partner in a LLP.
8. **Whistle Blowing:** Under The LLP Act,2008 Provision has been made to provide protection to employees & partners, providing useful information during an investigation or convicting any partner or firm.

4.0 ESSENTIAL ELEMENTS TO INCORPORATE AN LLP

Under The LLP Act, 2008, the following elements are very essential to form a LLP in India:

1. **To decide about Partners and to appoint minimum two individuals as Designated Partners.** At least one of them should be resident in India. Each Designated Partner is required to have a DPIN before appointment. A prior consent

to act as designated partners is required to be obtained in the prescribed form and manner before the appointment.

2. **To have LLP Name**: The LLP cannot have the same name with any other LLP, Partnership Firm or Company.
3. **To have a Registered Office** to which all communications and notices may be addressed and where they shall be received.
4. **To execute a LLP Agreement** between the partners *inter se* or between the LLP and its partners. Where LLP Agreement is silent,the relevant provisions of First Schedule of LLP Act, 2008 will be applied. The First Schedule deals with mutual rights and duties of partners, as well limited liability partnership and its partners. LLP Agreement usually consists of :
   (a) Name of LLP
   (b) Address of Registered Office of LLP
   (c) Name & Address of each of Partners & Designated Partners of LLP
   (d) Proposed Business of LLP
   (e) Form of Contribution & Interest on Contribution of Partners
   (f) Profit Sharing Ratio of Partners
   (g) Rights & Duties of Partners
   (h) Remuneration of Partners
   (i) Rules for governing LLP
5. **To complete and file Incorporation Document along with the Compliance Statement** in the prescribed form along with the prescribed fees with the Registrar electronically;
6. **To file LLP Agreement** with the Registrar within 30 days of incorporation of LLP.

5.0 STEPS TO INCORPORATE LLP

Step 1: Name Reservation

File ***e-Form 1***, for ascertaining availability and reservation of the name of a LLP business.

Step 2: Incorporate LLP

(i) File ***e- Form 2*** for incorporating a new Limited Liability Partnership (LLP) and obtain LLPIN (Limited Liability Partnership Identification Number)

Note: ***e-Form 2*** contains the details of LLP proposed to be incorporated, partners'/ designated partners' details and consent of the partners/designated partners to act as partners/ designated partners.

Step 3: File LLP Agreement

File LLP Agreement in ***e- Form 3*** with the Registrar within 30 days of incorporation of LLP.

6.0 DISTINCTION BETWEEN PARTNERSHIP FIRM AND LLP

A Partnership Firm and LLP may be distinguished as follows:

Basis of Distinction	*Partnership Firm*	*LLP*
1. Regulating Law	It is governed by **'The Indian Partnership Act, 1932'**	It is governed by '**The Limited Liability Partnership Act, 2008'**
2. Body Corporate	It is not a Body Corporate.	It is a Body Corporate.
3. Separate Legal Entity	**It has no** separate legal entity.	It **has** separate legal entity.
4. Perpetual Succession	It does **not have perpetual succession**. The death, insolvency or unsoundness of its members may affect its existence.	It **has** perpetual succession. The death, insolvency or unsoundness of its members does not affect its existence. Members may come and go but LLP goes forever.
5. Liability of Partners	Liability of Partner is **unlimited**. Partners are severally and jointly liable for actions of other partners and the firm and liability extend to their personal assets.	Liability of Partner is **limited**, to the extent their contribution towards LLP, except in case of intentional fraud or wrongful act of omission or commission by the partner.
6. Registration	Registration is **optional.**	Registration is **compulsory.**
7. Creation	It is created **by agreement.**	It is created **by Law.**
8. Designated Partners	It **need not have** Designated Partners.	It **must have** at least 2 individuals as Designated Partners, of whom at least one must be resident in India. Each Designated Partner is required to have a DPIN before appointment.
9. Digital Signature	There is **no requirement** of obtaining Digital Signature	At least one Designated Partner **must have** Digital Signatures since *e* forms are filled electronically.
10. Liability of Partners for Legal Compliance	**All Partners** are liable for Legal Compliance.	**Only Designated Partners** are liable for Legal Compliance.
11. Name of Entity	It can have **any name** as per choice.	Its Name to contain **'Limited Liability Partnership' or 'LLP'** as suffix.

12. Mutual Agency	Partners are **agents of the firm and other partners**.	Partners act as **agents of LLP and not of other partners**.
13. Admission of Minor	Minor **can be admitted** to the benefits of Partnership as per its Agreement.	Minor **can not be admitted** to the benefits of LLP.
14. Can Foreign National become partner?	Foreign National **can not become** a partner in a Partnership Firm in India.	Foreign National **can become a Partner** in a LLP.
15. Number of Members	Minimum **2** and Maximum **10** for Banking business & **20** for non- Banking business.	**Minimum 2** but their is **no limit on maximum** number of partners.
16. Whistle Blowing	**No such provision** is provided under The Indian Partnership Act, 1932	**Provision has been made to** provide protection to employees & partners, providing useful information during an investigation or convicting any partner or firm.
17. Annual Filing with Registrar	No Return is required to be filed with Registrar of Firms	1. Annual Statement of Accounts 2. Statement of Solvency 3. Annual Return required to be filed with Registrar of LLP every year.

7.0 DISTINCTION BETWEEN LIMITED LIABILITY COMPANY AND LLP

A Limited Liability Company and a LLP may be distinguished as follows:

Basis of Distinction	Limited Liability Company	LLP
1. Regulating Law	It is governed by **'The Companies Act, 2013'**	It is governed by 'The Limited Liability Partnership Act, 2008'
2. Motive	It can be formed for **Profit or Service motive**.	It can be formed **only for Profit motive**.
3. Number of Members	**Private Company : Minimum 2** members(OPC1) & **maximum 200** members. **Public Company: Minimum 7** members but their is **no limit on maximum** number of partners.	**Minimum 2** but their is **no limit on maximum** number of partners.

4. **Liability of Partners/ Members**	Generally **limited to** the amount remaining **unpaid** on each share.	Liability of Partner is Limited, **to the extent their contribution** towards LLP, except in case of intentional fraud or wrongful act of omission or commission by the partner.
5. **Name of Entity**	Name of Public Co to contain **'Limited' and** Name of Private Co to contain **'Private Limited'**.	Its Name to contain **'Limited Liability Partnership' or 'LLP'** as suffix.
6. **Formalities of Incorporation**	1. Memorandum & Articles of Association 2. **Various e Forms** 3. **Prescribed Fee.** required to be filled with Registrar of Companies.	1. **LLP Agreement** 2. **Various e Forms** 3. **Prescribed Fee.** required to be filled with Registrar of LLP.
7. **Filing of Annual Statement of Solvency**	Annual Statement of Solvency is **not required** to be filed with the Registrar of Companies every year.	Annual Statement of Solvency is **required** to be filed with the Registrar of LLP every year.
8. **Minimum No. of Directors/ Designated Partners**	Public Co to have at least 3 directors. Private Co to have at least 2 directors.	LLP must have at least 2 Designated Partners.
9. **Whistle Blowing**	**No such provision** is provided under the Companies Act, 1956.	**Provision** has been **made** to provide protection to employees & partners, providing useful information during an investigation or convicting any partner or firm.
10. **Audit of Accounts**	Companies are required to get their accounts audited **annually** as per the provisions of the Companies Act, 1956.	An LLP is required to get their accounts audited annually as per the provisions of LLP Act 2008 **if its turnover exceeds ₹ 40 Lacs or its capital contribution exceeds ₹ 25 Lacs in any financial year**.

8.0 WHO CAN BECOME A PARTNER IN LLP? [SEC 5]

Any individual or body corporate may be a partner in a limited liability partnership.

9.0 DISQUALIFICATIONS OF AN INDIVIDUAL TO BECOME A PARTNER[SEC 5]

An individual shall not be capable of becoming a partner of a limited liability partnership, if—

1. he has been found to be of **unsound mind** by a Court of competent jurisdiction and the finding is in force;
2. he is an **undercharged insolvent;** or
3. he has **applied to be adjudicated as an insolvent** and his application is pending.

10.0 MINIMUM NUMBER OF PARTNERS [SEC 6]

MINIMUM NO OF PARTNERS

Every LLP must have at least **2** partners.

EFFECT OF REDUCTION IN MINIMUM NO OF PARTNERS

If at any time the number of partners of a LLP is reduced below 2 and the LLP **carries on business for more than 6 months** while the number is so reduced, the person, who is the only partner of the LLP during the time that it so carries on business after those 6 months and has the knowledge of the fact that it is carrying on business with him alone, shall be **personally liable** for the obligations of the LLP incurred during that period.

11.0 DESIGNATED PARTNERS [SEC 7]

Meaning	Designated Partner means any partner designated as such u/s Sec 7.
Minimum No & only Individual	Every LLP must have **at least 2 individuals** as designated partners and at least 1 of them must be a **resident in India**. The term "resident in India" means a person who has stayed in India for a period of **at least 182 days** during the immediately preceding 1 year. **Note:** Nominees (who must be individuals) of bodies corporate partners of LLP can act as designated partners.
Who will be a Designated Partner? [Sec 7 (2)]	Subject to Sec 7 (1), if the Incorporation Document- (a) specifies who are to be designated partners, such persons shall be designated partners on incorporation; *or* (b) states that each of the partners from time to time of LLP is to be designated partner, every partner shall be a designated partner;
Who can become / cease to be a Designated Partner?	Any partner may become /cease to be a designated partner in accordance with the LLP agreement.

Prior Consent [Sec 7 (3)]	An individual must give his prior consent to act as a designated partner in prescribed form and manner before his appointment.
Filing with the Registrar [Sec 7 (4)]	Every LLP must file with the Registrar the particulars of every individual who has given his consent to act as designated partner in prescribed form and manner **within 30 days of his appointment.**
Satisfy Conditions [Sec 7 (5)]	An individual eligible to be a designated partner must satisfy prescribed conditions and requirements.
Designated Partner Identification Number (DPIN) [Sec 7 (6)]	Every Designated Partner of a LLP must obtain a Designated Partner Identification Number (DPIN) from the Central Government and the provisions of Sections 266A to 266G (both inclusive) of The Companies Act, 1956 shall apply *mutatis mutandis* for the said purpose.
Liabilities [Sec 8]	Unless expressly provided otherwise in this Act, a designated partner shall be— (a) responsible for the doing of all acts, matters and things as are required to be done by the LLP in respect of compliance of the provisions of this Act including filing of any document, return, statement and the like report pursuant to the provisions of this Act and as may be specified in the LLP agreement; and (b) liable to all penalties imposed on the LLP for any contravention of those provisions.
Changes in Designated Partners [Sec 9]	A LLP may appoint a designated partner **within 30 days of a vacancy** arising for any reason and provisions of Sec 7(4) & (5) shall apply in respect of such new designated partner. **Note:** *If No designated partner is appointed, or if at any time there is only one designated partner, each partner shall be deemed to be a designated partner.*
Punishment for contravention of Sections 7, 8 and 9[Sec 10]	1. If the LLP contravenes the provisions of section 7(1), the LLP and its every partner shall be punishable with fine which shall not be less than ₹ 10,000 but which may extend to ₹ 5,00,000. 2. If the LLP contravenes the provisions of Section 7(4) &(5), section 8 or section 9, the LLP and its every partner shall be punishable with fine which shall not be less than ₹ 10,000 but which may extend to ₹ 1,00,000.

12.0 INCORPORATION DOCUMENT [SEC 11]

1. At least two Subscribers	Two or more persons associated for carrying on a lawful business with a view to profit must subscribe their names to an incorporation document.
2. Contents	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; (e) state the name and address of each of the persons who are to be partners of the LLP on incorporation; (f) state the name and address of the persons who are to be designated partners of the LLP on incorporation; (g) contain such other information concerning the proposed LLP as may be prescribed.
3. Filing	The incorporation document must be filed along with the Compliance Statement in such manner and with such fees, as may be prescribed with the Registrar of the State in which the registered office of the LLP is to be situated.
4. Compliance Statement	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 LLP 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.
5. Penalty	If a person makes a statement which he knows to be false; or does not believe to be true, shall be punishable with imprisonment for a term upto **2 years** and with fine which shall not be less than ₹ **10,000** but which may extend **to ₹ 5,00,000.**

13.0 INCORPORATION BY REGISTRATION [SEC 12]

1. Certificate	On compliance of all the requirements as per Section 11 the Registrar shall register the incorporation document and give a certificate that the LLP is incorporated by the name specified therein **within 14 days.**
2. Signature	The certificate issued shall be signed **by the Registrar.**
3. Official Seal	The certificate issued shall authenticated by **Official Seal of the Registrar.**
4. Conclusive Evidence	The **certificate shall be** conclusive evidence that the LLP is incorporated by the name specified therein.

14.0 EFFECTS OF REGISTRATION [SEC 14]

On registration, a LLP shall by its name, be capable of—

(a) suing and being sued;

(b) acquiring, owning, holding and developing or disposing of property, whether movable or immovable, tangible or intangible;

(c) having a common seal, if it decides to have one; and

(d) doing and suffering such other acts and things as bodies corporate may lawfully do and suffer.

THEORETICAL QUESTIONS

1. Define Limited Liability Partnership and state its basic features.
2. State the Need of new form of Limited Liability Partnership.
3. State the Advantages of LLP form.
4. State the Essential elements to incorporate LLP.
5. State the Steps to Incorporate LLP.
6. Distinguish between a Partnership Firm and LLP.
7. Distinguish between a Limited Liability Company and LLP.
8. Who can become a Partner in LLP? State the Disqualifications of an Individual to become a Partner. Also state the minimum number of Partners to form LLP.
9. State the provisions relating to Designated Partner of a LLP
10. State the provisions relating to Incorporation Document of a LLP.
11. State the effects of registration of a LLP.

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