INTRODUCTION:

- The Limited Liability Partnership (LLP) is viewed as an alternative corporate business vehicle that provides the benefits of limited liability but allows its members the flexibility of organizing their internal structure as a partnership based on a mutually arrived agreement. It avoids the risk of unlimited liability in partnership form of business and the hassles of cumbersome procedures of corporate form of business
- The LLP form would enable entrepreneurs, professionals and enterprises providing services of any kind or engaged in scientific and technical disciplines, to form commercially efficient vehicles suited to their requirements.
- Owing to flexibility in its structure and operation, the LLP would also be a suitable vehicle for small enterprises and for investment by venture capital.
- The structure of the legislation governing LLP in India would be based on the UK and Singapore model of legislation.
- The LLP Bill 2008 has been passed by the Rajya Sabha on Oct 24th, 2008 and by the Lok Sabha on Dec 15th, 2008
- The LLP Bill consists of 14 chapters, 81 sections and 4 schedules
- The LLP Rules and Forms consists of 16 Chapters, 40 Rules, 29 Forms and 3 Annexure.

SALIENT FEATURES OF LIMITED LIABILITY PARTNERSHIP:

- LLP shall be a body corporate incorporated and formed under the Act governing the LLPs
- It shall have a perpetual succession and shall not be affected by the changes in the partners
- Minimum No. of Partners - Two; Maximum No. of Partners – No Limits.
- Disqualifications from being a partner:
    - Person declared as having an unsound mind by a competent court

- Undischarged Insolvent
- Person applied for being adjudged insolvent
- Corporation sole
- Co-operative society.

- Designated Partners (DPs) – Two minimum Designated partners – to be individuals and at least one of them shall be resident (*similar to that of Directors in Company)*. The DPs have to give consent in *Form 9*.
- DPs to apply for DPIN (DP Identification Number) in *Form 7*. However if the Director Identification Number (DIN), is already allotted to an individual under the Companies (Director Identification Number) Rules, 2006, it shall be deemed to be the designated partner identification number (DPIN) and the holder of the DIN shall intimate to the Central Government in Form 25 for the purpose of DPIN.
- Disqualifications from being a DP(*Similar to disqualification of Manager Sec 385*):
    - Undischarged Insolvent or Adjudged Insolvent anytime in the past 5 years
    - Suspends or has suspended payment to his creditors in past 5 years
    - Is or has been convicted by any court for any offence involving moral turpitude with an imprisonment for not less than 6 months. (*Life time ban – Banned even if convicted before 5 preceding years*)
- Disqualifications, except relating to conviction, can be removed by the Central Govt. upon making an application requesting for the same.
- LLPs shall be bound by the Incorporation Document (*Form No. 2)* to be filed with the Registrar of the State in which the LLP is incorporated.
- A compliance statement of CA, CS, CWA who is engaged in the formation of LLP has to be attached along with the incorporation document.
- LLP comes into existence upon issue of Certificate of Registration by the Registrar of the State.
- Every LLP should have registered office in the state in which it is registered.

- Every LLP ***may*** have a common seal if it desires to have one.
- Every LLP registered shall add a suffix "**Limited Liability Partnership**" or an acronym "**LLP**" as last words of its name.
- If the proposed name of the LLP includes words like "Company Secretary" or "Chartered Accountants", etc. as indicative of any profession, approval of the Council of the governing body of such profession is required.
- Facility for Reservation of the name:
    - Upon an application (*Form 1*) and payment of fees, name of a *proposed* LLP can be reserved for a max. period of **3 months**
    - Existing firm or a company desirous of converting itself to LLP can reserve its existing names by making an application (*Form 27*) and payment of fees, for a max. period of **3 years** which can be renewed on expiry.
- The mutual rights and liabilities of the Partners of LLP shall be governed by the Limited Liability Partnership Agreement (*Form 4)* entered between the partners and filed with the Registrar within **30 days** of the agreement.
- A partner can resign from the partnership by giving a **30-day** notice to the other partners and has been filed with the Registrar by the LLP within 30 days of receipt.
- Every partner is an agent of the Partnership and not of the other partners.
- Unlimited Liability in the following cases:
    - No. of partners falling below 2 and business carried on for more than 6 months while the number is reduced and on having cognizance of the fact.
    - Where any act carried out by LLP or any partner with an intention to defraud the creditors of LLP or any person, the liability of partners of LLP shall be unlimited w.r.t. **all or any** of the debts of LLP
- Where any fraudulent act is carried out by any partner, then the LLP as a separate legal entity shall be equally liable as a partner unless it is proved that the act was carried on without the knowledge of the LLP.

- **Whistle Blowing Mechanism –**
    - Penalty levied on any partner or employee may be reduced or waived off by the Court or Tribunal, if it is found that such partner or employee has provided with some vital information necessary for the investigation conducted under the Act or where such information would lead to any partner or employee being convicted under this Act, provided sufficient opportunity of being heard and defend is given to the convicted person before being convicted.
- A Contribution (Capital) of a partner towards LLP can be in any of the following modes:
    - Tangible Property
    - Movable or Immovable Property
    - Intangible Property
    - Money or Promissory Notes
    - Contracts for services (performed or to be performed)
    - Any other agreements to contribute Cash or Property
- LLP can maintain books of accounts **either on Cash Basis or on Accrual Basis as may be deemed fit, but only according to double entry system of accounting.**
- A Statement of Account and Solvency (*Form 8*) has to be prepared within 6 months after the end of the financial year. And has to be signed by designated partners and has to be filed with the registrar of the state within the prescribed time.
- An Annual return (*Form 11*) shall be filed with the Registrar within 60 days from the end of the financial year in such form and accompanied with such fees as may be prescribed. Annual Return to be certified by a Company Secretary **only.**
- Audit of the Accounts of the LLP shall be compulsory if
    - The turnover for **any** financial year exceeds Rs. 40 lakhs **[and]**
    - The contribution exceeds Rs 25 lakhs.
- Auditors of LLP:
    - Appointment has to be made for each financial year.

        - First F.Y – before the end of such year
        - Subsequent F.Y – within 30 days before the end of such year
    - Has to be appointed by Designated Partners (DP) or majority of partners, DP fails to appoint them.
    - To be a Chartered Accountant in practice.
    - Remuneration – as decided by DP or LLP agreement.
    - Removal as per the procedure laid in the LLP agreement.
    - Resignation by an auditor **shall** be accompanied by a statement of circumstances connected with ceasing to hold an office or a statement *expressly* stating that no such circumstances exist.
    - DP may fill the casual vacancy in the office of auditors *even if the vacancy is created by resignation.*
- Any offence committed under the Act can be compounded by the Central Government
- Investigation of the affairs of the LLP can be done by the Cent. Govt.
    - Upon direction of the Tribunal
        - Either *suo motu.* or
        - On an application by 20% of the no. of partners of the LLP
    - By the order of any Court
- Inspector for the purpose of the Investigation cannot be a firm, body corporate or any association.
- Winding up of the LLP shall be initiated in the following cases
    - if the limited liability partnership decides that limited liability partnership be wound up by the Tribunal;
    - if, for a period of more than six months, the number of partners of the limited liability partnership is reduced below two;
    - if the limited liability partnership is unable to pay its debts;

  - if the limited liability partnership has acted against the interests of the sovereignty and integrity of India, the security of the State or public order;
  - if the limited liability partnership has made a default in filing with the Registrar the Statement of Account and Solvency **or** annual return for any five consecutive financial years; or
  - if the Tribunal is of the opinion that it is just and equitable that the limited liability partnership be wound up.

- Central Government is empowered to direct that any of the provisions of the Companies Act 1956, shall be applicable to the LLP as it is or with such exception and modifications.
- Facility of Electronic filing of the documents is also made available for LLPs
- In the absence of the LLP agreement between the partners the following provisions will be applicable as provided in the First Schedule to the Act.
  - Share equally in capital, profit and losses
  - The partner has to indemnify the LLP, for any loss caused by any fraud arising due to his conduct.
  - No Partner to be entitled to remuneration for acting in the business or management of LLP
  - Every matter to be decided by passing resolution. Simple majority is sufficient to pass the resolution.
  - One partner – one vote
  - Following matters require **unanimous resolution** – consent of all partners
    - Admission of a person as a partner
    - Change in the nature of the business
    - Change of the name of the LLP, unless otherwise required by the LLP Agreement.

        - Removal of the auditor, unless otherwise required by the LLP Agreement

    - Minutes book to be maintained at the regd. office with entries to be made within **30 days** of passing resolutions.
    - If any parallel business is carried on by any partner competing LLP, he shall have to account all the profits of the parallel business to LLP, *unless he has obtained the consent of the LLP*
    - A majority of partners can expel a partner **only if** there is an express agreement for empowering them for the same.

- **Defunct LLPs:**
    - Registrar, having reasons to believe that the LLP has not carried on the business for a period of one year or more, may either suo motu or upon an application (*Form 24*) from the LLP, may strike of the name from the register, after giving the LLP a reasonable opportunity of being heard.
    - However, the Tribunal, upon an application from the LLP within **5 years** from the publication of removal of the name, may order for the restoration of the name.
- **Conversion of Firm into LLP(**Second Schedule to the Act)**:**
    - An existing firm may convert itself into a LLP **only when all the partners of existing firm become the partners of the proposed LLP.**
- **Conversion of Private Co./Unlisted Public Co. into LLP**(3rd and 4th Schedule):
    - An existing Private Co. may convert itself into a LLP only when
        - when there is no security interest in its assets
        - when all the shareholders of the erstwhile company becomes the partners of the LLP
- **Procedure for Conversion**
    - For conversion, the firm/company has to file
        - an application for conversion.

        - each partner/shareholder of the erstwhile firm/company has to give a statement in *Form 17/18* giving the necessary details,
        - the Incorporation Document and
        - the LLP Agreement.
    - Registrar, on being satisfied with the documents submitted, shall issue a certificate of registration in *Form 19*
    - Information about the registration to be communicated to the Registrar of the firms/Registrar of Companies within 15 days of registration.
    - The LLP, not later than 14 days from the date of the registration and for a period of 12 months has to mention in all its official correspondence :
        - the fact that the firm/company was converted into LLP **and**
        - the name and the reg.no. of the erstwhile firm/company

- **Taxation of LLPs:**
    - LLP Bill is silent regarding taxation of LLP under the Income-tax Act.
    - A separate Chapter is required under income-tax on taxation of LLP
    - As per the Pass-through Concept, share of each partner should be taxed in the hands of individual partners (as was the provision in case of partnership up to 1993).