

A
Presentation on

Limited Liability Partnerships

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**Two things fill the mind
with ever new and increasing
admiration and awe
the oftener and more steadily we
reflect on them**

**“the starry heavens above me
and the moral law within me”**

.....Immanuel Kant

What is LLP ?

Limited Liability Partnership

New Business Vehicle

Hybrid Form

LLP Bill Introduced in December 2006



Is India First Country to introduce LLP?

- Global Model

- US – 1996
- UK – 2000
- Japan – 2005
- Singapore – 2005



Why LLP Bill introduced?

- Potential for growth of the services sector
- Dominant role played by the professionals in the country's economy
- Present Position of LLP Bill
 - Referred to the Parliamentary Standing Committee on Finance for examination

Emergence of LLP Legislation

- Abid Hussain Committee (1997)
- Naresh Chandra Committee (2003)
- Dr. Irani Committee on New Company Law (2005)

Features

- Limited Liability
- Perpetual Succession
- Separate Legal Entity
- Flexible Profit Distribution
- Flexible Management Structure
- Few Legal and Procedural Requirements

Missing Features

- Pass through TAX treatment
- Cannot be formed for Charitable Purposes

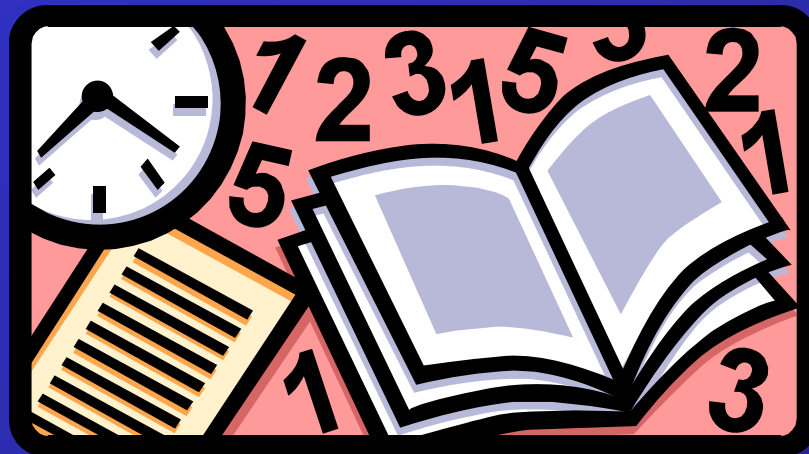
LLP Bill - Outline

- 14 Chapters
- 73 Sections + 7 Sections + 6 Sections
- 4 Schedules
- Rules '*as may be prescribed*' at 34 places

Who can be a partner in LLP ?

- Individual
- Body Corporate
 - Company as per Companies Act, 1956
 - LLP
 - Foreign LLP
 - Company incorporated outside India

Can a '*Number*' be far behind?



- All Partners to obtain PIN – Partner Identification Number
- Provisions of Sections 266A to 266G to apply *mutatis mutandis*

Partners

- Minimum Partners – 2
- Single Person can also run LLP
- Maximum – ?
 - NO LIMIT
- At least 2 Designated Partners – Only Individuals
- 1 Designated Partner to be Resident in India

Resident in India

- Stayed in India for a period of not less than 182 days during immediately preceding one year
- Case
 - X, a foreign national, stayed in India from 1.1.2007 to 1.7.2007 (182 days)
 - Can he be appointed as a ‘Designated Partner’ on 1.1.2008?
 - Can he continue as ‘Designated Partner’ after 2.1.2008?

Designated Partner

- To be appointed with effect from Incorporation Date
- Any vacancy to be filled in 30 days
- Changes in Designated Partners to be intimated within 30 days
- Penalty
 - Min. 10,000
 - Max. 5 Lakhs

Incorporation

- LLP can be incorporated for a '*lawful business with a view to profit*'
- Incorporation Document
- Registration within 14 days
- Certificate of Incorporation
- Conclusive Evidence that LLP is incorporated

What's in a name?

- Name to be obtained
- Name can be reserved for 3 months
- Invoices and Official Correspondence to bear –
 - Name
 - Address
 - Registration Number of LLP
 - Statement that it is registered with limited liability

What's in a name?

- To add LLP or Limited Liability Partnership as last words
- Central Government can direct change of name any time if it is -
 - Undesirable, or
 - Identical, or
 - Too nearly resembles with existing LLP, Partnership Firm or Body Corporate or a Registered Trade Mark

Partners

- Inter-se Rights and duties will be governed by Partnership Agreement
- No agreement – First Schedule will determine mutual rights and duties
- Partner can resign as agreed or by giving minimum 30 days' notice

Partnership Agreement

- Share of Partners
- Who shall take part in management?
- Remuneration of Partners
- Admission of New Partner
- Decisions in Partnership
- Expulsion of Partner

Cessation of Partner

- *'May'* cease to be a partner in case of his death
- Ceased Partner is regarded as a Partner in relation to any person who is dealing with the LLP unless-
 - *That person has notice of cessation, or*
 - *Notice is delivered to Registrar*

Liability of Partners

- Partner – Agent of LLP but not of other partners
- Liability of LLP to be met out of property of LLP
- Liability of Partners – LIMITED
- Unlimited Liability – Fraud

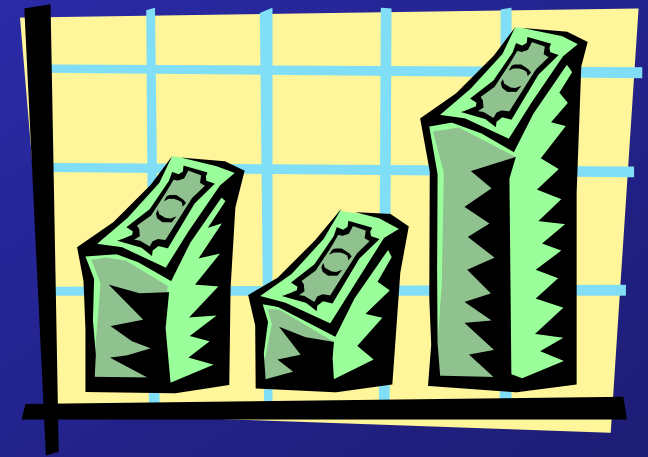
Contribution by Partners

- Contribution can be in the form of –
 - Tangible Property
 - Intangible Property
 - Contract for services
- Monetary value of contribution to be accounted for in the Accounts



Financial Disclosures

- Accounts – Cash or Accrual
- Fixed Financial Year
- Statement of Account & Solvency to be filed within 6 months of close of financial year
- Audit is *mandatory*



Financial Disclosures

- File Annual Return
 - *Within 60 days from the close of financial year*
- Statement of Account & Solvency and Annual Return can be inspected at Registrar's Office

Transferable Partnership Rights

- Transferable Rights
 - Right to receive share of profit and losses
 - Right to receive distribution

Powers of Government

- To call for Information
- To order Investigation
- To file for winding-up
- To file proceedings for recovery of damages or property

Schedules

- First Schedule
 - Default Provisions for LLP's
- Second Schedule
 - For conversion of *Firm* to *LLP*
- Third Schedule
 - For conversion of *Private Company* to *LLP*
- Fourth Schedule
 - For conversion of *unlisted Public Company* to *LLP*

Merger, Amalgamation or Winding-up

- Merger/Amalgamation/Arrangement of LLP can be done
- Winding-up
 - Voluntary
 - By Tribunal
 - Number of Partners below two
 - Inability to pay debts
 - Default in filing SAS or Annual Return for 5 consecutive years
 - Just and equitable

Miscellaneous Provisions

- Loan by Partners
- Application of Company Law
- E-filing of documents
- Default Fees
 - Rs. 500/- for each day of delay
- Strike-off power with the Registrar
- All offences are criminal offences
- Whistle Blowing

Penalties

- Heavy Penalties
- Non-filing of Annual Return/Statement of Account & Solvency
 - LLP – Min Rs. 1 lakh, Max Rs. 5 lakhs
 - Designated Partner – Min Rs. 10,000/-
Max Rs. 1 lakh

Tax Treatment

- Not defined
- Pass-through Tax Treatment provided in concept paper

“Intelligence is like a river; the deeper it is, the less noise it makes”

Thank you

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