

BUSINESS LAW

UNIT 5: The Limited Liability Partnership Act, 2008

TOPIC- LLP PARTNERS AND THEIR RELATIONS

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LLP : PARTNERS AND THEIR RELATIONS

- As per Section 5, any individual or body corporate may be partner in an LLP. This means an HUF or a partnership firm cannot be a partner in an LLP.

WHO CAN BE A PARTNER IN AN LLP	WHO CANNOT BE A PARTNER IN AN LLP
<ul style="list-style-type: none">• Individual• Company –Indian or Foreign• LLP- Indian or Foreign	<ul style="list-style-type: none">• Individual who is found to be of unsound mind by a Court• Individual who is an undischarged insolvent• Individual who has applied to be adjudged insolvent

- Every LLP shall have atleast 2 partners. There is no maximum limit of partners .
- If at any time the number of partners of an LLP is reduced to one and such LLP carries on business with such sole partner for more than 6 months, then such sole partner, if he has knowledge of such a situation, shall be liable personally for payment of the whole debts of the LLP contracted during that period.
- A person can become a partner in LLP
 - ✓ By Subscription i.e. by subscribing his name to the Incorporation Document on incorporation of an LLP
 - ✓ By Agreement i.e. subsequent to incorporation, new partners can be admitted in LLP as per the conditions and requirements of the LLP Agreement
- Every partner shall inform the LLP of any change in his name or address with 15 days of such change. The LLP, in turn, would be required to file such details with the Registrar within 30 days of such change. Similarly, whenever any person becomes or ceases to be a partner, the LLP shall be required to intimate the Registrar about it by filing a notice with him within 30 days. This way the Registrar would have up to date information with him.

Cessation of Partnership Interest

- A person **may** cease to be a partner in accordance with the agreement with other partners or by giving not less than 30 days notice to the other partners, if there is no such agreement. Such a partner is referred to as a former partner.
- A person **shall** also cease to be partner in the following cases
 - ✓ on his death or dissolution of the LLP
 - ✓ on being declared by a Court to be of unsound mind
 - ✓ on being declared an insolvent
 - ✓ if he has applied to be adjudged insolvent
- Effect of cessation of Partnership interest
 - ✓ the former partner continues to be regarded as a partner of LLP in relation to any person dealing with the LLP unless that person has notice that the former partner has ceased to be a partner of LLP or a notice of aforesaid fact has been delivered to the Registrar
 - ✓ the former partner shall continue to be liable to the LLP/ other partners/ any other person for those obligations which he incurred during his partnership.
 - ✓ the former partner or a person entitled to his share in case of death or insolvency, shall be entitled to receive from the LLP an amount equal to his capital contribution + his share of accumulated profits after deduction of its losses.
 - ✓ the former partner or a person entitled to his share in case of death or insolvency, shall not have any right to interfere in the management of the LLP.
 - ✓ whenever any person becomes or ceases to be a partner, the LLP shall be required to intimate the Registrar about it by filing a notice with him within 30 days.

Designated Partners

- Every LLP is required to have 'designated partners' who shall be accountable for **regulatory and legal compliances** of the LLP. Thus they shall be
 - ✓ responsible for doing all such things and acts as are required for compliance of various provisions of the Act like filing of prescribed documents, returns, statements, reports etc
 - ✓ liable to all penalties imposed on the LLP for the contravention of any of the provisions of the Act and LLP Agreement
- The designated partners should be **atleast two** in number out of which atleast **one should be resident in India** i.e. his stay in India **during the financial year should have been for 120 days or more** . If at any time , there is only one designated partner, each partner shall be deemed to be a designated partner.
- Designated partners must necessarily be **individuals**. Where body corporates are partners in LLP, their nominees who are individuals can act as designated partners.
- Every designated partner should have a **DPIN** (Designated Partners Identification Number) / **DIN** (Director Identification Number).DPIN is a unique 8 digit identification number valid for lifetime, allotted by Central Govt . to individuals intending to be appointed as designated partners and to enable Govt. keep track of people who run the LLPs. Those who intend to become designated partners of a newly incorporated LLP can now apply for DPIN through Form FiLLiP itself. Those who intend to become designated partners of an existing LLP shall have to apply for DIN by filling up DIR-3 under the Companies Rules and DIN so obtained shall be sufficient for appointment as designated partner under the LLP Act.
- **Prior consent** to be intimated and **Particulars of designated** partners to be filed- A partner shall intimate to the LLP, his consent to become a designated partner. Thereafter , the LLP shall file with the Registrar the particulars of every designated partner, who has so consented, in prescribed form within 30 days of the appointment.
- **Limit on designated Partners-** Now a person at a time cannot be a designated partner in more than **20** LLPs.(by virtue of sec 165 of companies Act, 2013 made applicable to LLPs w.e.f. 11/02/2022)

Appointment of Designated partners

- Any partner may become or cease to be designated partner in accordance with the LLP Agreement.
- Where designated partners have been named in the Incorporation Document, they shall be regarded as designated partners on incorporation.
- If the Incorporation document states that each of the partners, from time to time, is to be designated partner, then every partner of the LLP shall be a designated partner.

Eligibility Conditions For Appointment Of Designated Partners (RULE 9 OF LLP RULES,2009)- A person is not eligible to be appointed as designated partner if

- in the preceding 5 years, he has been adjudged insolvent or
- in the preceding 5 years, he has suspended payment to his creditors or had made composition with them
- he has been convicted by a Court for any offence involving moral turpitude (i.e. dishonesty, embezzlement etc.) and sentenced to imprisonment of 6 months or more
- he has been convicted by a Court for an offence involving Section 30 of the Act i.e. defrauding creditors or carrying on LLP for a fraudulent purpose

LIABILITY OF LLP (EXTENT AND LIMIT) Sec. 26-30

- Since LLP is a separate legal entity, the obligation of the LLP whether contractual or otherwise, shall solely be its own obligation. So, the liabilities of LLP shall be met out of the properties of LLP.
- An LLP will be liable towards third parties for all those acts of its partners which fall within the scope of their actual and implied authority. LLP shall also be bound by those unauthorised acts of the partner which he did in an emergency situation to protect the LLP from loss or those which have been ratified by the LLP .
- The LLP is not bound by an act of a partner , if the partner has no authority to act for the LLP .
- Where ,by the wrongful act or omission of a partner acting in the ordinary course of business of a LLP ,or with its authority, any loss or injury is caused to any third party, or any penalty is incurred, the LLP will be liable to the same extent as the partner.
- Where a LLP or any partner or designated partner or employee has conducted the affairs of the LLP in a fraudulent manner, then apart from criminal proceedings, each of the above mentioned shall be liable to compensate the person who has suffered any loss due to such conduct. But, the LLP shall not be liable if such partner/ designated partner/ employee has acted fraudulently without the knowledge of LLP.

LIABILITY OF PARTNERS (LIMIT AND EXTENT) Sec. 26-30

- Every partner of an LLP, for the purpose of business of LLP, will be an agent of the LLP and not of other partners. So, he not be liable for any other partners' unauthorised /wrongful act or omission.
- Such a partner can make the LLP liable towards third parties only if he acts within the scope of his express or implied authority or authority in emergency
- So the extent of a partners authority depends on his
 - ✓ Express authority i.e. authority granted under an agreement of all partners to do certain acts on behalf of the LLP.
 - ✓ Implied authority i.e. such acts done by a partner which are incidental or usually done in the ordinary course of business and such authority is presumed to be with the partner eg. buying goods/selling goods/ contracting debts/ paying debts/drawing cheques/pledging goods/ employing servants on behalf of the LLP.
 - ✓ Authority in emergency –i.e. authority to do all such acts in an emergency situation , to protect the LLP from a loss ,as would be done by a person of ordinary prudence.
- A partner can also make the LLP liable for his unauthorised acts provided these have been validly ratified by the LLP. Incase the LLP disowns them or does not ratify, then the partner will be personally liable on it.
- Since limited liability is a basic feature of an LLP, a partner is not personally liable , directly or indirectly, for an obligation of an LLP. The liability of partners of an LLP will be limited only to the extent of their investment in the LLP.

LIABILITY OF PARTNERS (LIMIT AND EXTENT) Sec. 26-30

- **Deceased partners liability** -Incase a partner dies but the business of LLP keeps continuing, then his legal representatives or his estate will not be liable for any act of LLP done after his death. The deceased partner is liable only for liabilities undertaken during his lifetime.
- **Liability incase of holding out**- If a person represents to the outside world, through his words, conduct or behavior that he is a partner in a certain LLP, though actually he is not, then he will be estopped from denying his being a partner, and is liable as a partner in that LLP, to all those who have relied on that representation and have granted credit to that LLP.
- **Personal Liability of a partner** arises in the following situations-
 - ✓ acts undertaken by a partner beyond his authority, which are not ratified by the LLP.
 - ✓ his wrongful act or omission done without authority but he is not liable for wrongful acts of other partners
 - ✓ when no. of partners in an LLP fall below 2 and the sole partner carries on LLP business for more than 6 months , he will be personally liable for all debts incurred during that period.
- **Unlimited Liability incase of fraud (sec.30)**- The liability of a partner who has acted with intent to defraud creditor or for any fraudulent purposes shall be unlimited and he will also be liable to a fine ranging from Rs.50,000 to 5 lakh + imprisonment \leq 5 years
- **Liability for Compensation**- Where an LLP/any partner/ employee has conducted affairs of LLP in a fraudulent manner, then apart from criminal action against him under any law, each of the above shall be liable to compensate the person who has suffered any loss/damage because of such conduct.