

Unit IV: The Limited Liability Partnership Act, 2008

a) Salient Features of LLP

The salient features of LLP Act, 2008, inter alia, are as follows:

1. It is a body corporate with separate legal entity from its partners. The mutual rights and duties of the partners of an LLP are governed by LLP Agreement.
2. LLP is liable to the extent of its assets. Partner's liability is limited to the extent of agreed contribution (capital) in the LLP Agreement.
3. No partner is liable on account of the independent or unauthorized action of other partners or for their misconduct.
4. Every LLP should have at least two partners with at least two individuals as "designated partners", of whom at least one must be resident in India. Only designated partners are responsible for compliance with the Act.
5. A firm, private company or an unlisted public company can be converted into LLP.
6. The Act empowers Central Government to apply provisions of the Companies Act, 1956 as appropriate, by notification with such changes as deemed necessary, in the LLP Act, 2008.
7. The winding up of LLP is either voluntary or by the High Court.

b) Difference between LLP and Partnership, LLP and Company

S. No.	Basis	Partnership	Private Limited Company	Limited Partnership	Liability
1	Prevailing Law	Partnership is prevailed by 'The Indian Partnership Act, 1932' and various Rules made thereunder	Companies are prevailed by ' Companies Act, 2013 '	Limited Partnership are prevailed by ' The Limited Partnership Act, 2008 ' and various Rules made thereunder	Liability are prevailed by ' Liability Act, 2008 ' and various Rules made thereunder
2	Capital Required	No minimum amount	Normally Rs. 1 Lacs	No minimum amount	
3	Time of Registration	5-7 days	7-10 days in complete process	7-10 days in complete process	
4	Name of Entity	Any name as per choice	Name to contain 'Private Limited' in case of Private Company as suffix.	Name to contain 'Limited Liability Partnership' or 'LLP' as suffix.	

5	Registration	Registration is optional	Registration with Registrar of ROC required.	Registration with Registrar of LLP required.
6	Creation	Created by contract with 2 persons	Created by Law	Created by Law
7	Distinct entity	Not a separate legal entity	Is a separate legal entity under the Companies Act, 2013.	Is a separate legal entity under the Limited Liability Partnership Act, 2008.
8	Cost of Formation	The Cost of Formation is negligible	Minimum Statutory fee for incorporation of Company is Relatively High	The cost of Formation is statutory filling fees, comparatively lesser than the cost of formation of Company.
9	Perpetual Succession	It does not have perpetual succession as this depends upon the will of partners	It has perpetual succession and members may come and go.	It has perpetual succession and partners may come and go
10	Charter Document	Partnership Deed is a charter of the firm which denotes its scope of operation and rights and duties of the partners	Memorandum and Article of Association is the charter of the company that defines its scope of operations.	LLP Agreement is a charter of the LLP which denotes its scope of operation and rights and duties of the partners vis-à-vis LLP.
11	Common Seal	There is no concept of common seal in partnership	It denotes the signature of the company and every company shall have its own common seal	It denotes the signature and LLP may have its own common seal, dependant upon the terms of the Agreement
12	Formalities of Incorporation	In case of registration, Partnership Deed along with form / affidavit required to be filled with Registrar of firms along with requisite filing fee	Various eforms along the Memorandum & Articles of Association are filled with Registrar of Companies with prescribed fees	Various eforms are filled with Registrar of LLP with prescribed fees
13	Foreign Participation	Foreign Nationals can not form Partnership Firm	Foreign Nationals can be a member in a Company.	Foreign Nationals can be a Partner in a LLP.

		in India		
14	Number of Members	Minimum 2 and Maximum 20	2 to 200 members in case of Private Company	Minimum 2 partners and there is no limitation of maximum number of partners.
15	Ownership of Assets	Partners have joint ownership of all the assets belonging to partnership firm	The company independent of the members has ownership of assets	The LLP independent of the partners has ownership of assets
16	Legal Proceedings	Only registered partnership can sue third party	A company is a legal entity which can sue and be sued	A LLP is a legal entity can sue and be sued
17	Liability of Partners/Members	Unlimited. Partners are severally and jointly liable for actions of other partners and the firm and liability extend to their personal assets.	Generally limited to the amount required to be paid up on each share.	Limited, to the extent their contribution towards LLP, except in case of intentional fraud or wrongful act of omission or commission by the partner.
18	Tax Liability	Income of Partnership is taxed at a Flat rate of 30% plus education cess as applicable.	Income of Company is Taxed at a Flat rate of 30% Plus surcharge as applicable.	Income of LLP is taxed at a Flat rate of 30% plus education cess as applicable.
19	Principal/Agent Relationship	Partners are agents of the firm and other partners.	The directors act as agents of the company and not of the members	Partners act as agents of LLP and not of the other partners.
20	Transfer / Inheritance of Rights	Not transferable. In case of death the legal heir receives the financial value of share.	Ownership is easily transferable.	Regulations relating to transfer are governed by the LLP Agreement .
21	Transfer of Share / Partnership rights in case of death	In case of death of a partner, the legal heirs have the right to get the refund of the capital	In case of death of member, shares are transmitted to the legal heirs.	In case of death of a partner, the legal heirs have the right to get the refund of the capital contribution + share in accumulated profits, if

		contribution + share in accumulated profits, if any. Legal heirs will not become partners		any. Legal heirs will not become partners
22	Director Identification Number / Designated Partner Identification Number (DIN / DPIN)	The partners are not required to obtain any identification number	Each director is required to have a Director Identification Number before being appointed as Director of any company.	Each Designated Partners is required to have a DPIN before being appointed as Designated Partner of LLP.
23	Digital Signature	There is no requirement of obtaining Digital Signature	As eforms are filled electronically, atleast one Director should have Digital Signatures	As eforms are filled electronically, atleast one Designated Partner should have Digital Signatures.
24	Dissolution	By agreement, mutual consent, insolvency, certain contingencies, and by court order.	Voluntary or by order of National Company Law Tribunal.	Voluntary or by order of National Company Law Tribunal.
25	Admission as partner / member	A person can be admitted as a partner as per the partnership Agreement	A person can become member by buying shares of a company.	A person can be admitted as a partner as per the LLP Agreement
26	Admission as partner / member	A person can be admitted as a partner as per the partnership Agreement	A person can become member by buying shares of a company.	A person can be admitted as a partner as per the LLP Agreement
27	Cessation as partner / member	A person can cease to be a partner as per the agreement	A member / shareholder can cease to be a member by selling his shares.	A person can cease to be a partner as per the LLP Agreement or in absence of the same by giving 30 days prior notice to the LLP.

28	Requirement of Managerial Personnel for day to day administration	No requirement of any managerial; personnel, partners themselves administer the business	Directors are appointed to manage the business and other statutory compliances on behalf of the members.	Designated Partners are responsible for managing the day to day business and other statutory compliances.
29	Statutory Meetings	There is no provision in regard to holding of any meeting	Board Meetings and General Meetings are required to be conducted at appropriate time.	There is no provision in regard to holding of any meeting.
30	Maintenance of Minutes	There is no concept of any minutes	The proceedings of meeting of the board of directors / shareholders are required to be recorded in minutes.	A LLP by agreement may decide to record the proceedings of meetings of the Partners/Designated Partners
31	Voting Rights	It depends upon the partnership Agreement	Voting rights are decided as per the number of shares held by the members.	Voting rights shall be as decided as per the terms of LLP Agreement.
32	Remuneration of Managerial Personnel for day to day administration	The firm can pay remuneration to its partners	Company can pay remuneration to its Directors subject to law.	Remuneration to partner will depend upon LLP Agreement.
33	Contracts with Partners/Director	Partners are free to enter into any contract.	Restrictions on Board regarding some specified contracts, in which directors are interested.	Partners are free to enter into any contract.
34	Maintenance of Statutory Records	Required to maintain books of accounts as Tax laws	Required to maintain books of accounts, statutory registers, minutes etc.	Required to maintain books of accounts.
35	Annual Filing	No return is required to be filed with	Annual Financial Statement and Annual Return is	Annual Statement of accounts and Solvency & Annual Return is

		Registrar of Firms	required to be filed with the Registrar of Companies every year.	required to be filed with Registrar of Companies every year.
36	Share Certificate	The ownership of the partners in the firm is evidenced by Partnership Deed, if any.	Share Certificates are proof of ownership of shares held by the members in the Company	The ownership of the partners in the firm is evidenced by LLP Agreement.
37	Audit of accounts	Partnership firms are only required to have tax audit of their accounts as per the provisions of the Income Tax Act	Companies are required to get their accounts audited annually as per the provisions of the Companies Act, 2013	All LLP except for those having turnover less than Rs.40 Lacs or Rs.25 Lacs contribution in any financial year are required to get their accounts audited annually as per the provisions of LLP Act 2008.
38	Applicability of Accounting Standards.	No Accounting Standards are applicable	Companies have to mandatorily comply with accounting standards	The necessary rules in regard to the application of accounting standards are not yet issued.
39	Compromise arrangements / merger / amalgamation	Partnership / cannot merge / with other firm or enter into compromise or arrangement with creditors or partners	Companies can enter into Compromise / arrangements / merger / amalgamation	LLP's can enter into Compromise / arrangements / merger / amalgamation
40	Oppression and mismanagement	No remedy exist , in case of oppression of any partner or mismanagement of Partnership	Provisions providing for remedy against Oppression and mismanagement exists	No provision relating to redressal in case of oppression and mismanagement
41	Credit Worthiness of organization	Creditworthiness of firm depends upon goodwill and creditworthiness of its partners	Due to Stringent Compliances & disclosures under various laws, Companies enjoys high	Will enjoy Comparatively higher creditworthiness from Partnership due to Stringent regulatory framework but lesser

			degree of creditworthiness.	
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c) Nature of LLP

1. Short title, extent and commencement.—(1) This Act may be called the Limited Liability Partnership Act, 2008. (2) It extends to the whole of India. (3) It shall come into force on such date¹ as the Central Government may, by notification in the Official Gazette, appoint: Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.
2. Definitions.—(1) In this Act, unless the context otherwise requires,— (a) "address", in relation to a partner of a limited liability partnership, means— (i) if an individual, his usual residential address; and (ii) if a body corporate, the address of its registered office; (b) "advocate" means an advocate as defined in clause (a) of sub-section (1) of section 2 of the Advocates Act, 1961 (25 of 1961); (c) "Appellate Tribunal" means the National Company Law Appellate Tribunal constituted under sub-section (1) of section 10FR of the Companies Act, 1956 (1 of 1956); (d) "body corporate" means a company as defined in section 3 of the Companies Act, 1956 (1 of 1956) and includes— (i) a limited liability partnership registered under this Act; (ii) a limited liability partnership incorporated outside India; and (iii) a company incorporated outside India, but does not include— (i) a corporation sole; (ii) a co-operative society registered under any law for the time being in force; and (iii) any other body corporate (not being a company as defined in section 3 of the Companies Act, 1956 (1 of 1956) or a limited liability partnership as defined in this Act), which the Central Government may, by notification in the Official Gazette, specify in this behalf; (e) "business" includes every trade, profession, service and occupation; (f) "chartered accountant" means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 (38 of 1949) and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;
3. Limited liability partnership to be body corporate.—
 - (1) A limited liability partnership is a body corporate formed and incorporated under this Act and is a legal entity separate from that of its partners.
 - (2) A limited liability partnership shall have perpetual succession.
 - (3) Any change in the partners of a limited liability partnership shall not affect the existence, rights or liabilities of the limited liability partnership.
4. Non-applicability of the Indian Partnership Act, 1932.—Save as otherwise provided, the provisions of the Indian Partnership Act, 1932 (9 of 1932) shall not apply to a limited liability partnership.
5. Partners.—Any individual or body corporate may be a partner in a limited liability partnership: Provided that an individual shall not be capable of becoming a partner of a limited liability partnership, if— (a) he has been found to be of unsound mind

by a Court of competent jurisdiction and the finding is in force; (b) he is an undischarged insolvent; or (c) he has applied to be adjudicated as an insolvent and his application is pending.

6. Minimum number of partners.—(1) Every limited liability partnership shall have at least two partners. (2) If at any time the number of partners of a limited liability partnership is reduced below two and the limited liability partnership carries on business for more than six months while the number is so reduced, the person, who is the only partner of the limited liability partnership during the time that it so carries on business after those six months and has the knowledge of the fact that it is carrying on business with him alone, shall be liable personally for the obligations of the limited liability partnership incurred during that period.
7. Designated partners.—(1) Every limited liability partnership shall have at least two designated partners who are individuals and at least one of them shall be a resident in India: Provided that in case of a limited liability partnership in which all the partners are bodies corporate or in which one or more partners are individuals and bodies corporate, at least two individuals who are partners of such limited liability partnership or nominees of such bodies corporate shall act as designated partners. Explanation.—For the purposes of this section, the term "resident in India" means a person who has stayed in India for a period of not less than one hundred and eighty-two days during the immediately preceding one year. (2) Subject to the provisions of sub-section (1),—
 - (i) 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 limited liability partnership is to be designated partner, every such partner shall be a designated partner;
 - (2) any partner may become a designated partner by and in accordance with the limited liability partnership agreement and a partner may cease to be a designated partner in accordance with limited liability partnership agreement.
 - (3) An individual shall not become a designated partner in any limited liability partnership unless he has given his prior consent to act as such to the limited liability partnership in such form and manner as may be prescribed.
 - (4) Every limited liability partnership shall file with the registrar the particulars of every individual who has given his consent to act as designated partner in such form and manner as may be prescribed within thirty days of his appointment.
 - (5) An individual eligible to be a designated partner shall satisfy such conditions and requirements as may be prescribed.
 - (6) Every designated partner of a limited liability partnership shall obtain a Designated Partner Identification Number (DPIN) from the Central Government and the provisions of sections 266A to 266G 8 (both inclusive) of the Companies Act, 1956 (1 of 1956) shall apply mutatis mutandis for the said purpose.
8. Liabilities of designated partners.—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 limited liability partnership 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 limited liability partnership agreement; and (b) liable to all penalties imposed on the limited liability partnership for any contravention of those provisions.

9. Changes in designated partners.—A limited liability partnership may appoint a designated partner within thirty days of a vacancy arising for any reason and provisions of sub-section (4) and sub-section (5) of section 7 shall apply in respect of such new designated partner: Provided that 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.
10. Punishment for contravention of sections 7, 8 and 9.—(1) If the limited liability partnership contravenes the provisions of sub-section (1) of section 7, the limited liability partnership and its every partner shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to five lakh rupees. (2) If the limited liability partnership contravenes the provisions of sub-section (4) and sub-section (5) of section 7, section 8 or section 9, the limited liability partnership and its every partner shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees.

INCORPORATION OF LIMITED LIABILITY PARTNERSHIP AND MATTERS INCIDENTAL THERETO

Incorporation document-

- (1) For a limited liability partnership to be incorporated,—
- (a) two or more persons associated for carrying on a lawful business with a view to profit shall subscribe their names to an incorporation document;
 - (b) the incorporation document shall be filed in such manner and with such fees, as may be prescribed with the Registrar of the State in which the registered office of the limited liability partnership is to be situated; and
 - (c) there shall be filed along with the incorporation document, 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 limited liability partnership 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.
- (2) 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 limited liability partnership on incorporation; (f) state the name and address of the persons who are to be designated partners of the

limited liability partnership on incorporation; (g) contain such other information concerning the proposed limited liability partnership as may be prescribed.

- (3) If a person makes a statement under clause (c) of sub-section (1) which he— (a) knows to be false; or (b) does not believe to be true, shall be punishable with imprisonment for a term which may extend to two years and with fine which shall not be less than ten thousand rupees but which may extend to five lakh rupees.

Incorporation by registration

- (1) When the requirements imposed by clauses (b) and (c) of sub-section (1) of section 11 have been complied with, the Registrar shall retain the incorporation document and, unless the requirement imposed by clause (a) of that sub-section has not been complied with, he shall, within a period of fourteen days— (a) register the incorporation document; and (b) give a certificate that the limited liability partnership is incorporated by the name specified therein.
- (2) The Registrar may accept the statement delivered under clause (c) of sub-section (1) of section 11 as sufficient evidence that the requirement imposed by clause (a) of that sub-section has been complied with.
- (3) The certificate issued under clause (b) of sub-section (1) shall be signed by the Registrar and authenticated by his official seal. (4) The certificate shall be conclusive evidence that the limited liability partnership is incorporated by the name specified therein.

Registered office of limited liability partnership and change therein.

- (1) Every limited liability partnership shall have a registered office to which all communications and notices may be addressed and where they shall be received.
- (2) A document may be served on a limited liability partnership or a partner or designated partner thereof by sending it by post under a certificate of posting or by registered post or by any other manner, as may be prescribed, at the registered office and any other address specifically declared by the limited liability partnership for the purpose in such form and manner as may be prescribed.
- (3) A limited liability partnership may change the place of its registered office and file the notice of such change with the Registrar in such form and manner and subject to such conditions as may be prescribed and any such change shall take effect only upon such filing.
- (4) If the limited liability partnership contravenes any provisions of this section, the limited liability partnership and its every partner shall be punishable with fine which shall not be less than two thousand rupees but which may extend to twenty-five thousand rupees.

Effect of registration.

On registration, a limited liability partnership 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.

Name.

- (1) Every limited liability partnership shall have either the words "limited liability partnership" or the acronym "LLP" as the last words of its name.
- (2) No limited liability partnership shall be registered by a name which, in the opinion of the Central Government is—
 - (a) undesirable; or
 - (b) identical or too nearly resembles to that of any other partnership firm or limited liability partnership or body corporate or a registered trade mark, or a trade mark which is the subject matter of an application for registration of any other person under the Trade Marks Act, 1999 (47 of 1999).

Reservation of name.

- (1) A person may apply in such form and manner and accompanied by such fee as may be prescribed to the Registrar for the reservation of a name set out in the application as— (a) the name of a proposed limited liability partnership; or (b) the name to which a limited liability partnership proposes to change its name.
- (2) Upon receipt of an application under sub-section (1) and on payment of the prescribed fee, the Registrar may, if he is satisfied, subject to the rules prescribed by the Central Government in the matter, that the name to be reserved is not one which may be rejected on any ground referred to in sub-section (2) of section 15, reserve the name for a period of three months from the date of intimation by the Registrar.

Change of name of limited liability partnership

- (1) Notwithstanding anything contained in sections 15 and 16, where the Central Government is satisfied that a limited liability partnership has been registered (whether through inadvertence or otherwise and whether originally or by a change of name) under a name which— (a) is a name referred to in sub-section (2) of section 15; or (b) is identical with or too nearly resembles the name of any other limited liability partnership or body corporate or other name as to be likely to be mistaken for it, the Central Government may direct such limited liability partnership to change its name, and the limited liability partnership shall comply with the said direction within three months after the date of the direction or such longer period as the Central Government may allow.
- (2) Any limited liability partnership which fails to comply with a direction given under sub-section (1) shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to five lakh rupees and the designated

partner of such limited liability partnership shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees.

Application for direction to change name in certain circumstances.

- (1) Any entity which already has a name similar to the name of a limited liability partnership which has been incorporated subsequently, may apply, in such manner as may be prescribed, to the Registrar to give a direction to any limited liability partnership, on a ground referred to in section 17 to change its name.
- (2) The Registrar shall not consider any application under sub-section (1) to give a direction to a limited liability partnership on the ground referred to in clause (b) of sub-section (1) of section 17 unless the Registrar receives the application within twenty-four months from the date of registration of the limited liability partnership under that name.

Change of registered name.

Any limited liability partnership may change its name registered with the Registrar by filing with him a notice of such change in such form and manner and on payment of such fees as may be prescribed.

Penalty for improper use of words "limited liability partnership" or "LLP".

If any person or persons carry on business under any name or title of which the words "Limited Liability Partnership" or "LLP" or any contraction or imitation thereof is or are the last word or words, that person or each of those persons shall, unless duly incorporated as limited liability partnership, be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees.

Publication of name and limited liability.

- (1) Every limited liability partnership shall ensure that its invoices, official correspondence and publications bear the following, namely:— (a) the name, address of its registered office and registration number of the limited liability partnership; and (b) a statement that it is registered with limited liability.
- (2) Any limited liability partnership which contravenes the provisions of sub-section (1) shall be punishable with fine which shall not be less than two thousand rupees but which may extend to twenty-five thousand rupees

PARTNERS AND THEIR RELATIONS

Eligibility to be partners

On the incorporation of a limited liability partnership, the persons who subscribed their names to the incorporation document shall be its partners and any other person may

become a partner of the limited liability partnership by and in accordance with the limited liability partnership agreement.

Relationship of partners

- (1) Save as otherwise provided by this Act, the mutual rights and duties of the partners of a limited liability partnership, and the mutual rights and duties of a limited liability partnership and its partners, shall be governed by the limited liability partnership agreement between the partners, or between the limited liability partnership and its partners.
- (2) The limited liability partnership agreement and any changes, if any, made therein shall be filed with the Registrar in such form, manner and accompanied by such fees as may be prescribed.
- (3) An agreement in writing made before the incorporation of a limited liability partnership between the persons who subscribe their names to the incorporation document may impose obligations on the limited liability partnership, provided such agreement is ratified by all the partners after the incorporation of the limited liability partnership.
- (4) In the absence of agreement as to any matter, the mutual rights and duties of the partners and the mutual rights and duties of the limited liability partnership and the partners shall be determined by the provisions relating to that matter as are set-out in the First Schedule.

Cessation of partnership interest

- (1) A person may cease to be a partner of a limited liability partnership in accordance with an agreement with the other partners or, in the absence of agreement with the other partners as to cessation of being a partner, by giving a notice in writing of not less than thirty days to the other partners of his intention to resign as partner.
- (2) A person shall cease to be a partner of a limited liability partnership— (a) on his death or dissolution of the limited liability partnership; or (b) if he is declared to be of unsound mind by a competent court; or (c) if he has applied to be adjudged as an insolvent or declared as an insolvent.
- (3) Where a person has ceased to be a partner of a limited liability partnership (hereinafter referred to as "former partner"), the former partner is to be regarded (in relation to any person dealing with the limited liability partnership) as still being a partner of the limited liability partnership unless— (a) the person has notice that the former partner has ceased to be a partner of the limited liability partnership; or (b) notice that the former partner has ceased to be a partner of the limited liability partnership has been delivered to the Registrar. 12
- (4) The cessation of a partner from the limited liability partnership does not by itself discharge the partner from any obligation to the limited liability partnership or to the other partners or to any other person which he incurred while being a partner.
- (5) Where a partner of a limited liability partnership ceases to be a partner, unless otherwise provided in the limited liability partnership agreement, the former partner

or a person entitled to his share in consequence of the death or insolvency of the former partner, shall be entitled to receive from the limited liability partnership—

- (a) an amount equal to the capital contribution of the former partner actually made to the limited liability partnership; and
 - (b) his right to share in the accumulated profits of the limited liability partnership, after the deduction of accumulated losses of the limited liability partnership, determined as at the date the former partner ceased to be a partner.
- (6) A former partner or a person entitled to his share in consequence of the death or insolvency of the former partner shall not have any right to interfere in the management of the limited liability partnership.

Registration of changes in partners

- (1) Every partner shall inform the limited liability partnership of any change in his name or address within a period of fifteen days of such change.
- (2) A limited liability partnership shall— (a) where a person becomes or ceases to be a partner, file a notice with the Registrar within thirty days from the date he becomes or ceases to be a partner; and (b) where there is any change in the name or address of a partner, file a notice with the Registrar within thirty days of such change.
- (3) A notice filed with the Registrar under sub-section (2)— (a) shall be in such form and accompanied by such fees as may be prescribed; (b) shall be signed by the designated partner of the limited liability partnership and authenticated in a manner as may be prescribed; and (c) if it relates to an incoming partner, shall contain a statement by such partner that he consents to becoming a partner, signed by him and authenticated in the manner as may be prescribed.
- (4) If the limited liability partnership contravenes the provisions of sub-section (2), the limited liability partnership and every designated partner of the limited liability partnership shall be punishable with fine which shall not be less than two thousand rupees but which may extend to twenty-five thousand rupees.
- (5) If any partner contravenes the provisions of sub-section (1), such partner shall be punishable with fine which shall not be less than two thousand rupees but which may extend to twenty-five thousand rupees.
- (6) Any person who ceases to be a partner of a limited liability partnership may himself file with the Registrar the notice referred to in sub-section (3) if he has reasonable cause to believe that the limited liability partnership may not file the notice with the Registrar and in case of any such notice filed by a partner, the Registrar shall obtain a confirmation to this effect from the limited liability partnership unless the limited liability partnership has also filed such notice: Provided that where no confirmation is given by the limited liability partnership within fifteen days, the registrar shall register the notice made by a person ceasing to be a partner under this section.

EXTENT AND LIMITATION OF LIABILITY OF LIMITED LIABILITY PARTNERSHIP AND PARTNERS

Partner as agent.—Every partner of a limited liability partnership is, for the purpose of the business of the limited liability partnership, the agent of the limited liability partnership, but not of other partners.

Extent of liability of limited liability partnership.—

- (1) A limited liability partnership is not bound by anything done by a partner in dealing with a person if— (a) the partner in fact has no authority to act for the limited liability partnership in doing a particular act; and (b) the person knows that he has no authority or does not know or believe him to be a partner of the limited liability partnership.
- (2) The limited liability partnership is liable if a partner of a limited liability partnership is liable to any person as a result of a wrongful act or omission on his part in the course of the business of the limited liability partnership or with its authority.
- (3) An obligation of the limited liability partnership whether arising in contract or otherwise, shall be solely the obligation of the limited liability partnership. (4) The liabilities of the limited liability partnership shall be met out of the property of the limited liability partnership. 28. Extent of liability of partner.—

- (1) A partner is not personally liable, directly or indirectly for an obligation referred to in sub-section (3) of section 27 solely by reason of being a partner of the limited liability partnership.
- (2) The provisions of sub-section (3) of section 27 and sub-section (1) of this section shall not affect the personal liability of a partner for his own wrongful act or omission, but a partner shall not be personally liable for the wrongful act or omission of any other partner of the limited liability partnership.

Holding out.

- (1) Any person, who by words spoken or written or by conduct, represents himself, or knowingly permits himself to be represented to be a partner in a limited liability partnership is liable to any person who has on the faith of any such representation given credit to the limited liability partnership, whether the person representing himself or represented to be a partner does or does not know that the representation has reached the person so giving credit: Provided that where any credit is received by the limited liability partnership as a result of such representation, the limited liability partnership shall, without prejudice to the liability of the person so representing himself or represented to be a partner, be liable to the extent of credit received by it or any financial benefit derived thereon
- (2) Where after a partner's death the business is continued in the same limited liability partnership name, the continued use of that name or of the deceased partner's name as a part thereof shall not of itself make his legal representative or his estate liable for any act of the limited liability partnership done after his death.

Unlimited liability in case of fraud

- (1) In the event of an act carried out by a limited liability partnership, or any of its partners, with intent to defraud creditors of the limited liability partnership or any other person, or for any fraudulent purpose, the liability of the limited liability partnership and partners who acted with intent to defraud creditors or for any fraudulent purpose shall be unlimited for all or any of the debts or other liabilities of the limited liability partnership: Provided that in case any such act is carried out by a partner, the limited liability partnership is liable to the same extent as the partner unless it is established by the limited liability partnership that such act was without the knowledge or the authority of the limited liability partnership.
- (2) Where any business is carried on with such intent or for such purpose as mentioned in sub-section (1), every person who was knowingly a party to the carrying on of the business in the manner aforesaid shall be punishable with imprisonment for a term which may extend to two years and with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees.
- (3) Where a limited liability partnership or any partner or designated partner or employee of such limited liability partnership has conducted the affairs of the limited liability partnership in a fraudulent manner, then without prejudice to any criminal proceedings which may arise under any law for the time being in force, the limited liability partnership and any such partner or designated partner or employee shall be liable to pay compensation to any person who has suffered any loss or damage by reason of such conduct: Provided that such limited liability partnership shall not be liable if any such partner or designated partner or employee has acted fraudulently without knowledge of the limited liability partnership.

Whistle blowing.

- (1) The Court or Tribunal may reduce or waive any penalty leviable against any partner or employee of a limited liability partnership, if it is satisfied that—
 - (a) such partner or employee of a limited liability partnership has provided useful information during investigation of such limited liability partnership; or
 - (b) when any information given by any partner or employee (whether or not during investigation) leads to limited liability partnership or any partner or employee of such limited liability partnership being convicted under this Act or any other Act.
- (2) No partner or employee of any limited liability partnership may be discharged, demoted, suspended, threatened, harassed or in any other manner discriminated against the terms and conditions of his limited liability partnership or employment merely because of his providing information or causing information to be provided pursuant to sub-section (1)

Taxation of LLP

Treatment of Firm and LLP is equal under Income Tax

Section 2 (23) (i) of the **Income Tax Act, 1961** defines the term 'firm'. As per the said definition, the firm shall have the same meaning as assigned in the Indian Partnership Act, 1932 and the term firm shall include the Limited Liability Partnership as defined in the Limited Liability Partnership Act, 2008.

Similarly, the definition of term 'partner' as contained in section 2 (23) (ii) and the definition of term 'partnership' as provided in section 2 (23) (iii) also includes LLP within its ambit.

Following the above definitions, it is easy to conclude that under Income Tax, the LLP taxation treatment remains the same as a Firm.

Income Tax Rate of LLP as applicable for the Assessment Year 2020-2021

The **LLP is liable to pay income tax @30%** on its income. In case the total income exceeds INR 1 Crore, LLP is also liable to pay surcharge @12% on the income tax.

Additionally, health and education cess of 4% is payable on the income tax plus surcharge.

Alternate Minimum Taxation (AMT)

Initially, the concept of MAT, i.e. Minimum Alternative Tax, was introduced only for the companies. However, gradually it was made applicable to all the other taxpayers in the form of AMT, i.e. Alternate Minimum Taxation. Hence it forms a part of the LLP taxation.

Before understanding AMT provisions, it is important to understand the difference between MAT and AMT which are –

Particulars	MAT	AMT
Relevant Section	Section 115JB	Section 115JC to Section 115JF
Applicability	Company	Taxable Person, other than the company, claiming deduction under section 80H to 80RRB (except section 80P), or section 10AA or section 35AD.
Taxability	MAT is payable on book profit	AMT is payable on adjusted total income
Reporting requirement	Form 29B	Form 29C

Applicability of the provisions of AMT to LLPs

Vide Finance Act, 2011, the provisions of AMT were made applicable to the LLP. Provisions of AMT are applicable only in the following cases –

1. When an LLP has claimed deduction under section 80H to 80RRB (except section 80P).
2. If an LLP has claimed deduction under section 35AD.
3. When an LLP has claimed deduction under section 10AA.

Threshold exemption under AMT

The provisions of Section 115JEE of the Income Tax Act states that the AMT applies to an Individual, Hindu Undivided Family, Association of Person, Body of Individuals and the artificial juridical person only in case the 'adjusted total income' exceed INR 20 Lakhs.

It is important to mention here that the benefit of the threshold exemption is available only to the categories of persons mentioned above. The benefit of threshold exemption is not available to the partnership firm, LLP and other non-corporate assessee.

Rate of AMT

AMT @ 18.50% (plus surcharge and cess as applicable) of the adjusted total income is leviable.

AMT is levied @ 9% (plus surcharge and cess as applicable) in case of a non-corporate assessee being the unit located in IFSC [International Financial Services Centre] and such unit is deriving its income only in convertible foreign exchange. The same is effective from the Assessment Year 2019-2020.

Calculation of Adjusted Total Income

AMT rates are applicable on 'adjusted total income' and therefore it is vital to understand the calculation of 'adjusted total income'. Here's how –

Particulars	Amount
Total taxable income of the LLP	XXX
Add – Amount of deduction claimed under section 80H to section 80RRB (except section 80P)	XXX

Add – Amount of deduction claimed under section 35AD (reduced by the depreciation allowable as per section 32)	XXX
Add – Amount of deduction claimed under section 10AA	XXX
Adjusted total income	XXX

Computation of tax liability

If AMT provisions apply to the LLP, in that case, the LLP tax liability would be calculated as –

Particulars	Amount
Tax liability computed as per the normal provisions of the Income Tax Act (A)	XXX
Tax liability computed as per AMT provisions (B)	XXX
Tax payable by the LLP would be higher of (A) or (B)	XXX

It is essential to note here that the LLP is required to pay tax as per AMT only in the Financial Year, wherein, the tax on normal income is lower than AMT on Adjusted total income.

AMT credit

If in any year, the LLP pays tax liability as per AMT, then it is entitled to claim AMT credit. The amount of AMT credit would be excess of tax paid as per AMT over the tax payable as per normal provisions i.e., $AMT\ Credit = Tax\ paid\ as\ per\ AMT\ provisions - Tax\ computed\ as\ per\ normal\ provisions$.

The AMT credit can be utilized in the subsequent years. The AMT credit can be adjusted in the year in which the tax payable as per normal provisions is more than the tax payable as per AMT. The utilization of AMT is allowed as follows –

Amount of utilization of AMT credit = Tax payable as per normal provisions (-) Tax as per AMT.

The AMT credit can be carried forward for a period of 15 years immediately following the assessment year in which such credit is generated. If the AMT credit remains unutilized, within a period of 15 years, the pending AMT credit will lapse.

Reporting requirements

If AMT provisions apply to LLP, then, the LLP is required to obtain a report in FORM 29C from the Chartered Accountant. The said report certifies that the calculation of adjusted total income and the AMT is as per the applicable provisions

Conversion of LLP

Conversion from firm into limited liability partnership.—A firm may convert into a limited liability partnership in accordance with the provisions of this Chapter and the Second Schedule.

Conversion from private company into limited liability partnership.

A private company may convert into a limited liability partnership in accordance with the provisions of this Chapter and the Third Schedule. 57. Conversion from unlisted public company into limited liability partnership.—An unlisted public company may convert into a limited liability partnership in accordance with the provisions of this Chapter and the Fourth Schedule.

Registration and effect of conversion

- (1) The Registrar, on satisfying that a firm, private company or an unlisted public company, as the case may be, has complied with the provisions of the Second Schedule, the Third Schedule or the Fourth Schedule, as the case may be, shall, subject to the provisions of this Act and the rules made thereunder, register the documents submitted under such Schedule and issue a certificate of registration in such form as the Registrar may determine stating that the limited liability partnership is, on and from the date specified in the certificate, registered under this Act: Provided that the limited liability partnership shall, within fifteen days of the date of registration, inform the concerned Registrar of Firms or Registrar of Companies, as the case may be, with which it was registered under the provisions of the Indian Partnership Act, 1932 (9 of 1932) or the Companies Act, 1956 (1 of 1956) as the case may be, about the conversion and of the particulars of the limited liability partnership in such form and manner as may be prescribed.
- (2) Upon such conversion, the partners of the firm, the shareholders of private company or unlisted public company, as the case may be, the limited liability partnership to which such firm or such company has converted, and the partners of the limited

liability partnership shall be bound by the provisions of the Second Schedule, the Third Schedule or the Fourth Schedule, as the case may be, applicable to them.

- (3) Upon such conversion, on and from the date of certificate of registration, the effects of the conversion shall be such as specified in the Second Schedule, the Third Schedule or the Fourth Schedule, as the case may be.
- (4) Notwithstanding anything contained in any other law for the time being in force, on and from the date of registration specified in the certificate of registration issued under the Second Schedule, the Third Schedule or the Fourth Schedule, as the case may be,— (a) there shall be a limited liability partnership by the name specified in the certificate of registration registered under this Act; (b) all tangible (movable or immovable) and intangible property vested in the firm or the company, as the case may be, all assets, interests, rights, privileges, liabilities, obligations relating to the firm or the company, as the case may be, and the whole of the undertaking of the firm or the company, as the case may be, shall be transferred to and shall vest in the limited liability partnership without further assurance, act or deed; and (c) the firm or the company, as the case may be, shall be deemed to be dissolved and removed from the records of the Registrar of Firms or Registrar of Companies, as the case may be.