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Why do we need separate form of organization?
RATIONALE - NEED FOR A SEPARATE FORM OF ORGANIZATION

- There is a need for Multi Disciplinary Professionals Firm
- There is restriction on number of partners u/s. 464
- BIG Hurdle is the liability of all partners is unlimited
RATIONALE - NEED FOR A SEPARATE FORM OF ORGANIZATION

- SME can not cope up with corporate financial rigidity [i.e. Dividend, capital and related party transaction]
- SME can not cope up with compliance requirements in Company
- SME sector generally do not raise money from public
What is LLP?

- Provisions of Partnership Act – not applicable
- Provisions of Companies Act [except winding up] - Not applicable
## COMPARISON WITH EXISTING OPTIONS

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Partnership</th>
<th>Limited Liability Partnership</th>
<th>Company</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legal Entity</td>
<td>No separate entity</td>
<td>Separate entity</td>
<td>Separate Legal Entity</td>
</tr>
<tr>
<td>Perpetual Succession</td>
<td>Not applicable</td>
<td>Applicable</td>
<td>Applicable</td>
</tr>
<tr>
<td>Liability</td>
<td>Unlimited</td>
<td>Limited</td>
<td>Limited</td>
</tr>
</tbody>
</table>
Does the LLP really have Perpetual Succession??
LIABILITY UNDER LLP

- LLP is liable, in case of wrongful act or omission by the partner in the course of business.
- LLP is not liable if outsider is aware that the partner has no authority to act.
- Partner is not liable for the wrongful acts/omission of any other partner of LLP.
- Partner may be personally liable [e.g., Auditors liability].
- Partner to indemnify the LLP for any loss caused to it by his fraud in the conduct of the business.
## COMPARISON WITH EXISTING OPTIONS

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<thead>
<tr>
<th>Particulars</th>
<th>Partnership</th>
<th>Limited Liability Partnership</th>
<th>Company</th>
</tr>
</thead>
<tbody>
<tr>
<td>Compliance level</td>
<td>Low</td>
<td>Moderate</td>
<td>High</td>
</tr>
<tr>
<td>Dividend Distribution Tax</td>
<td>Not applicable</td>
<td>Not Applicable</td>
<td>Applicable</td>
</tr>
<tr>
<td>Dispute Resolution System</td>
<td>Not available</td>
<td>Not available</td>
<td>Available</td>
</tr>
<tr>
<td>Making investment in shares</td>
<td>Not possible</td>
<td>Possible</td>
<td>Possible</td>
</tr>
</tbody>
</table>
## Comparison with Existing Options

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Partnership</th>
<th>Limited Liability Partnership</th>
<th>Company</th>
</tr>
</thead>
<tbody>
<tr>
<td>FDI/ ODI/ ECB</td>
<td>Eligible</td>
<td>FDI – where there are no sectoral caps /conditions ODI allowed</td>
<td>Eligible</td>
</tr>
<tr>
<td>NBFC</td>
<td>Not eligible</td>
<td>Not eligible</td>
<td>Eligible</td>
</tr>
<tr>
<td>From Bankers point of view</td>
<td>Un favorable</td>
<td>Un favorable</td>
<td>Favorable</td>
</tr>
<tr>
<td>Information at Public Domain</td>
<td>NIL</td>
<td>Lower</td>
<td>Higher</td>
</tr>
</tbody>
</table>

WHO CAN PREFER LLP?

- Asset Holding Companies
- Best for Joint Venture entities
- All partnerships /AOP with long term objective
- Any company not having bank loans
- Professional Firms [CA/CS/CWA]
- Service sector/ Real Estate
WHO CAN NOT GO FOR LLP?

• Non profit making entities [NGO]
• Finance/ Investment entities [Till RBI recognises LLP]
• FDI is not allowed where there are sectoral caps or conditions
INCORPORATION

- Partnership Agreement is required to be entered (By default First Schedule is applicable)
- At least two partners
- At least two individuals are required as designated partners
- At least one of Designated Partners should be resident in India
IMPORTANT/ NEW CONCEPTS IN LLP

- Partner
- Designated Partner
- Contribution
- LLP Agreement
PARTNER IS AGENT OF LLP NOT OF OTHER PARTNERS

**Principles of Agency**

- Agency is the relationship which subsists between the principal and the agent, who has been authorized to act for him or represent him in dealings with others.
- Agent bound to conduct business on the directions of the principal.
- Agent is bound to conduct business with reasonable skill and diligence.
- Agent is bound to render proper accounts to its principal.
- When the agent acts otherwise, is liable to make the loss good to principal.
- Agent to compensate principal in case of negligence.
IMPORTANT CONCEPTS

- **Designated Partner** is a concept similar to officer in default
- **Contribution** is not a capital
- **Contribution** is similar to guarantee
- **Contribution** need not be the basis for voting/control
- **Contribution** need not be the basis for profit sharing
LLP AGREEMENT

- Provisions of the Indian Partnership Act, 1932 shall not apply to a limited liability partnership.
- In the absence of provision in LLP Agreement, of First Schedule are applicable
- First Schedule = Partnership Act
- LLP Act has only 81 Sections and 4 Schedules and Rules [Not like Companies Act]
IMPORTANT FEATURES OF FIRST SCHEDULE

- No partner shall draw remuneration
- LLP shall indemnify partner against liabilities incurred in Ordinary Course
- Each Partner shall have one vote at the meeting
- New partner can be admitted with consent of all the Partners
IMPORTANT FEATURES OF FIRST SCHEDULE

• Decision taken at Partners Meeting should be minuted within 30 days
• New business can be started with consent of all Partners
• Partner shall not compete with LLP
• Partner can not derive any benefit from LLP without consent of Partners
IMP. ASPECTS OF LLP AGREEMENT

- Profit Sharing Pattern/ Voting/ Contribution may not be related
- Powers of DP and Partners to be specified
- Decision making process to be defined
- Exit mechanism / dispute resolution
- AOA of public co. can be the basis
- Agreements for Family business / VC Undertaking / Widely held cos will be different
CONTENTS OF LLP AGREEMENT

- Name, Regd office, Objectives and Formation
- Partners and Changes in partners
- Designated Partners- Changes, Roles & Responsibility, Powers, Transfer or assignment rights, Rights and Duties..
- Management of the LLP
- Meetings and Voting
- Partners Contribution, Remuneration, Interest on capital contribution, Additions, withdrawal, Liability in case of death or disability of partner..
- Profit Sharing
- Books of Accounts
- Statutory records and flings

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CONTENTS OF LLP AGREEMENT

• Statutory Auditors
• Rights and Duties of partners
• Partners relations, authorities, restrictions and limitation of liabilities
• Consequences of breach of covenants
• Title to property
• Winding up and dissolution
• General Provision
  • Dispute Resolution, Waiver, Severability, Notices, Jurisdiction, Savings..
PROCESS FOR INCORPORATION

- Step I – Obtain DIN/ DSC
- Step II – Apply for Name [Form 1]
- Step III – Enter into LLP Agreement
- Step IV – Submit Form 2
- Step V – Obtain Certificate of Registration
- Step VI – Submit Form 3 within 30 days
- Process Time = 15 - 20 days
- Registration is now decentralized to the respective ROC
CONVERSION OF PARTNERSHIP INTO LLP

- All the assets and liabilities of the firm would get vested in LLP
- All the Partners becomes Partners of LLP
- Partnership Firm registered with ROF stands dissolved
- Partners personally liable for liabilities incurred before conversion
- Consent of all creditors is required
- Statement of assets and liabilities by CA [<30 days]
- Acknowledgement of last Income Tax rtns.
CONVERSION OF COMPANY TO LLP

- There should not be any security interest on the assets of the Company
- All the assets and liabilities of the Company would get vested in LLP
- All the shareholders becomes Partners of LLP
- Consent of all Creditors is required
- Statement of assets and liabilities by CA [<30 days]
- Acknowledgement of last Income Tax rtns.
- Company stands dissolved

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PROCESS OF CONVERSION

- Step I – Update Residential status of Designated partner by filing DIR-6/ Apply DIN
- Step II – Apply for Name [Form 1]
- Step III – Application for conversion in Form 2 and form 17 OR 18
- Step IV – Obtain Certificate of Conversion
- Step V – Enter into LLP Agreement
- Submit Form 3 within 30 days
- Step VI – Filing form 14 – in case of conv. of firm into LLP
- Process Time = 25-30 days
- Registration is now decentralized to the respective ROC
CRITICAL ASPECTS OF CONVERSION

- Treatment of Equity Capital
- Treatment of Equity Capital with Differential Voting Right
- Treatment of Preference capital
- Treatment of Shareholders Agreement
- Role of Directors/ Managing Directors
- Method of maintaining Books of Accounts
- Stamp Duty Implications
- Change in licenses/ govt. registrations
CONVERSION OF LLP INTO COMPANY

- 7 Partners required
- Consent of secured creditors
- No default in filing of forms
CONVERSION OF LLP INTO COMPANY - PROCESS

- Make changes in partners
- File e-form 3 & 4 with RoC for change in partners (if applicable)
- Name application in INC-1
- Newspaper Advertisement for objections in URC-2 – 21 clear days
- File application for conversion of LLP into company in URC-1
- Incorporation forms INC-7, INC-22 and DIR-12
ATTACHMENTS TO FORM URC-1

- List of partners along with the details of shares not older than 6 days from the date of application
- List of directors
- An affidavit from all the partners stating post regn., docs shall be submitted for dissolution
- List of partners with name and address
- Copies all previous deed and COI
- Consent or NOC from secured creditors
- Written consent from the majority of members/Partners for conversion
Statement specifying the particulars of capital
Copy of Newspaper advertisement
Certificate from a Directors certifying the compliance shall be done with all the provisions of Stamp Act, to the extent applicable
Statement of Assets and liabilities not older than 30 days from the auditor;
Declaration stating that all the forms of LLP has been filed
INTERESTING QUESTIONS?

Whether Doctrine of Ultra Vires is applicable?

Sec-11 (2) The incorporation document shall state the proposed business of the limited liability partnership.
INTERESTING QUESTIONS?

Whether Doc., of Indoor Mgt. is applicable?
INTERESTING QUESTIONS?

• Can LLP issue debentures/ bonds?
• Can LLP convert into Company/ Firm?
• Can LLP have Share Capital over and above contribution?
• Can LLP list on Stock Exchange?
• Can LLP carry out investment as its incidental business?
**Unless otherwise stated in agreement**

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Act/Rules</th>
<th>First Schedule</th>
</tr>
</thead>
<tbody>
<tr>
<td>Admission</td>
<td></td>
<td>Consent of all partners</td>
</tr>
<tr>
<td>Resignation</td>
<td>Notice in writing not less than 30 days</td>
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<tr>
<td>Removal</td>
<td></td>
<td>No majority of the partners can expel any partner unless a power to do so has been conferred by express agreement between the partners.</td>
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</table>
DESIGNATED PARTNER
Unless otherwise stated in agreement

<table>
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<tr>
<td></td>
<td></td>
<td>been conferred by express agreement between the partners.</td>
</tr>
<tr>
<td>Particulars</td>
<td>One place to another place within state</td>
<td>Outside state</td>
</tr>
<tr>
<td>-----------------------------------------------</td>
<td>------------------------------------------</td>
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</tr>
<tr>
<td>Consent of partners</td>
<td>Unless otherwise stated in agreement, Consent of all partners</td>
<td>Unless otherwise stated in agreement, Consent of all partners</td>
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<tr>
<td>Consent of secured creditors</td>
<td>Required</td>
<td></td>
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<tr>
<td>Notice of change</td>
<td>Form 15, within 30 days of change</td>
<td>Form 15, within 30 days of change</td>
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<tr>
<td>Newspaper publication (English and Vernacular Language)</td>
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<td>21 days before filing notice with registrar</td>
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<tr>
<td>Particulars</td>
<td>Act/Rules</td>
<td>First Schedule</td>
</tr>
<tr>
<td>-------------------------</td>
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<td>Increase</td>
<td>No provision</td>
<td>No provision</td>
</tr>
<tr>
<td>Reduction/withdrawal</td>
<td>No provision</td>
<td>No provision</td>
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</tbody>
</table>
Unless otherwise stated in agreement

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Act/Rules</th>
<th>First Schedule</th>
</tr>
</thead>
<tbody>
<tr>
<td>Voting</td>
<td></td>
<td>One partner one vote</td>
</tr>
<tr>
<td>Profit/Loss share</td>
<td></td>
<td>Equal ratio</td>
</tr>
</tbody>
</table>
ACCOUNT AND AUDIT
On cash basis or accrual basis
According to Double entry system of accounting
Maintain at regd. Office
Preservation period – 8 years
Statement of Account and Solvency statement – within 6 months from the end of year – Form 8 – Within 30 days of end of 6 months period
Signed by DP of LLP
Approved by each designated partner
Audit is mandatory for LLPs having
- turnover exceeds Rs.40 lacs in any financial year and
- whose contribution exceeds Rs.25 lacs in any financial year.

LLP which are exempted from audit and don’t get its accounts audited – Statement to be included in statement of Account and solvency by the partners to the effect that the partners acknowledge their responsibilities for complying with the requirements of the Act and the Rules with respect to preparation of books of account.
<table>
<thead>
<tr>
<th>Particulars</th>
<th>Act/Rules</th>
<th>First Schedule</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eligibility</td>
<td>Chartered Accountant in Practice</td>
<td></td>
</tr>
<tr>
<td>Tenure</td>
<td>One F.Y</td>
<td></td>
</tr>
<tr>
<td>Remuneration</td>
<td>As per agreement</td>
<td></td>
</tr>
<tr>
<td>Who can appoint</td>
<td>Designated Partner and if DP fails to appoints, partner</td>
<td></td>
</tr>
<tr>
<td>Resignation</td>
<td>Notice with reasoning</td>
<td></td>
</tr>
<tr>
<td>Removal</td>
<td>As per agreement or consent of all partners</td>
<td></td>
</tr>
</tbody>
</table>
HOW TO EXIT??
STRIKING OFF NAME OF LLP

- LLP not carrying on any business or operation:
  - For a period of 2 years or more [ROC suo moto]
  - For a period of 1 year or more and LLP have made application to registrar for striking off

Practical issues
- Form-3 of incorporation
- Form 8 and Form 11 at least once
LLP may apply for striking off name in E-form 24 along with:

- Copy of authority to make application
- Consent of all partners
- Consent of all creditors
- Copy of undertaking/Indemnity bond (Format not prescribed)
- Copy of statement of assets and liabilities certified by auditor
- Copy of latest Income-tax return
- ELSE – Winding up
Powers of Tribunal
## Powers of Tribunal

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Who Can Apply to tribunal?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Investigation of the affairs of LLP</td>
<td>• Suo-motu; or</td>
</tr>
<tr>
<td></td>
<td>• Application from 1/5(^{th}) of total no. of partners of LLP; or</td>
</tr>
<tr>
<td></td>
<td>• By order of court</td>
</tr>
<tr>
<td>Application for winding up and dissolution of LLP</td>
<td>• By Partners</td>
</tr>
<tr>
<td></td>
<td>• By Creditors</td>
</tr>
<tr>
<td>Compromise or arrangement</td>
<td>• By LLP</td>
</tr>
<tr>
<td>– LLP and creditors</td>
<td>• By Creditors of LLP</td>
</tr>
<tr>
<td>– LLP and Partners</td>
<td></td>
</tr>
<tr>
<td>Appeal in case of refusal by registrar to convert into LLP</td>
<td>Partners /Company</td>
</tr>
</tbody>
</table>
OPPORTUNITIES FOR CS

- Incorporation of LLP
- Drafting of LLP Agreement [V V IMP]
- Conversion of Partnerships into LLP
- Conversion of Private or Closely held Public Ltd cos’ into LLP
- Compliance services for LLP
- Gearing up for Multi Disciplinary Practice
THANK YOU

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