

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



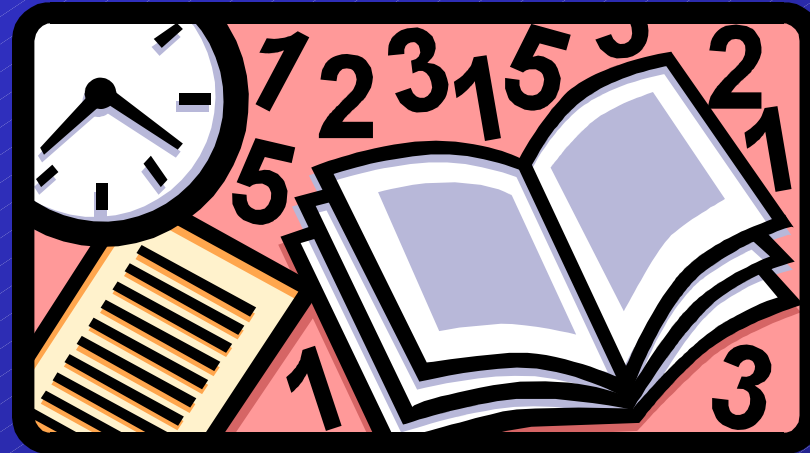
# LLP Bill - Outline

- 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

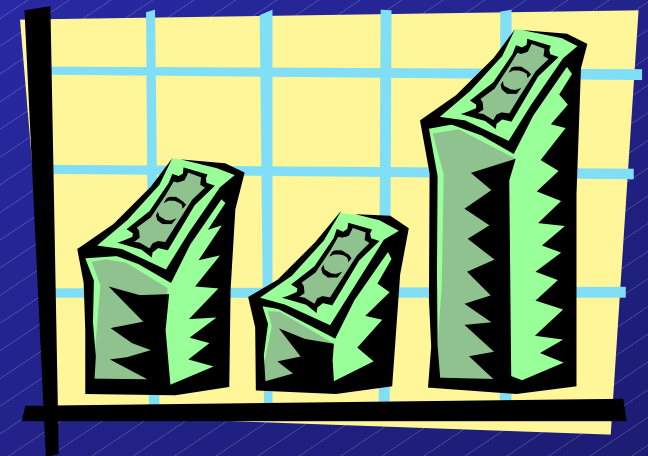
# Contribution by Partners

- 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**

**Ashish Makhija**

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