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YouTube -A commerce Education

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DEPARTMENT OF COMMERCE

JANTA KOSHI COLLEGE BIRAUL, DARBHANGA

**FOR-LNMU B. COM PART -2 Hons paper -III Business
and Regulatory Framework**

Unit-5 Limited Liability partnership Act,2008 Lecture-2



Easy to Understand the concept

PARTNERS

Following are the eligibility criteria to become partners in LLP

Can Become a Partner

- ✓ **Individual**
- ✓ **LLP**
- ✓ **Foreign LLP**
- ✓ **Company**
- ✓ **Foreign company**

Cannot Become a Partner

- ✓ **Partnership Firm**
- ✓ **Sole Corporation**
- ✓ **Trade Union**
- ✓ **Minor**
- ✓ **Hindu Undivided Family (HUF)**

b) DESIGNATED PARTNERS

The LLP shall have at least two partners as Designated Partners (DP) (at least one designated partner shall be a person resident in India) and they will be responsible for all the act, matter, things to be done by LLP viz filing returns, documents, etc., with the Registrar etc., and such act as may be provided in LLP Agreement.

3. CONVERSION

Existing Partnership firms whether registered or not under Indian Partnership Act, 1932 and unlisted companies can be converted into LLP in accordance with the provisions of the Second, Third and Fourth Schedules appended to the Act.

4. DISADVANTAGES

- ✓ *LLP has to follow certain procedure as filing of Annual Returns, Solvency statements and accounts, etc. which might be difficult for family run enterprises.*
- ✓ *The incorporation document, changes in the partners, statement of accounts and Annual Return are public documents and available for inspection by any person. The secrecy to the financial data cannot be maintained.*
- ✓ *No remedies available for oppression and mismanagement*
- ✓ *No systems prescribed for management and designated partners can manage as per their wish.*

- ✓ **More responsibility for compliances on designated partners who are liable for penalties also. There should be at least two designated partners and One of the designated partners should be resident in India.**

- ✓ **More cost of compliance as very few professionals handle this work.**

- ✓ **Dissolution provisions almost similar to companies**

- ✓ **New concept and LLPs may face difficulty in ensuring compliances as limited expertise available with no precedents**

Procedure for formation of LLP

a) Deciding Partners and Designated Partners for LLP formation

b) Obtaining DPIN No. & Digital Signature

c) Check the Name Availability

d) Filing of Incorporation Documents

e) Certificate of Registration

f) Information to Registrar of Firm (in case of conversion of partnership firm)

Taxation on LLP

- ✓ LLP's will be treated as Partnership Firms for the purpose of Income Tax w.e.f assessment year 2010-11***

- ✓ No surcharge will be levied on income tax.***

- ✓ Profit will be taxed in the hands of the LLP and not in the hands of the Partners.***

- ✓ Minimum Alternate Tax and Deemed Dividend provisions not applicable to LLP.***

- ✓ **Interest and Remuneration to Partners will be taxed as “Income from Business & Profession”.**

- ✓ **No capital gain on conversion of partnership firms into LLP u/s 47 (xiii)**

- ✓ **Designated Partners will be liable to sign and file the Income Tax return.**

- ✓ **LLP shall not be eligible for presumptive taxation.**

Limits on Remuneration to Partners:

- ✓ **On First Rs 3,00,000 of book profit or in case of Loss Rs 1,50,000**
or
at the rate of 90% of the book-profit,
whichever is More

- ✓ **On the balance of book profit at the rate of 60%**

Proposed Direct Tax Code bill do not provide for any limit on the remuneration. Remuneration to Partners shall be governed by the respective Agreement.

No capital gain on conversion

The conversion from a Partnership Firm to an LLP will not be subject to tax:

- ✓ ***If the rights and obligation of the partners remain the same after conversion and***
- ✓ ***If there is no transfer of any asset or liability after conversion.***

LLP Agreement

- ✓ ***LLP Agreement means any written agreement which determines the mutual rights and duties of the Partners and their rights and duties in relation to that of LLP.***

Rights of Partners

- ✓ ***Partners have the right to participate in the management of the LLP***
- ✓ ***They are not entitled to any remuneration for participating in the management of LLP unless otherwise provided in the LLP Agreement.***
- ✓ ***The partners would be entitled to share equal profits in the LLP or as may be provided by LLP agreement.***

- ✓ **The transfer of any right by any partner does not by itself cause the disassociation of the Partner or a dissolution and winding up of the LLP.**
- ✓ **Entitle the transferee or assignee to participate in the management or conduct of the activities of the LLP, or access information concerning the transactions of the LLP.**

Admission & cessation of Partner

A new partner can join the LLP or an existing partner can retire to be Partner of the LLP subject to the compliance of the terms and conditions of the LLP Agreement.