

# **LIMITED LIABILITY PARTNERSHIPS**

**By  
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# Introduction & History

- Recommendations of the Naresh Chandra Committee
- LLP Bill of 2006 introduced in Rajya Sabha on 15.12.2006 and referred to Parliamentary Standing Committee for its report.
- Based on the recommendation of the Parl. C'ttee. it was proposed to withdraw the LLP Bill of 2006 and fresh bill namely LLP Bill 2008 was introduced.
- Presidential Assent received to the LLP Bill 2008 on 07.01.2009 and the Bill became the LLP Act, 2008.
- MCA notified the appointed date to make the LLP Act 2008 effective as 31.03.2009.

# NATURE AND PURPOSE

*What is a Limited Liability Partnership ?*

- Hybrid Structure with advantages of Partnership and Corporate Entities.
- Limits the Liability of the Members to the extent of their contribution.

The essence of an LLP is to provide a vehicle to contain a partnership of any size and to protect its partners from the carelessness or negligence of a colleague.

# ADVANTAGES

- ✓ Low Cost of formation.
- ✓ Provides operational flexibility by way of savings in costs and time.
- ✓ Liability of its members is limited (except in cases of fraud or where the no. of partners is reduced to 1 and LLP continues for 6 months).
- ✓ Perpetual existence - continues till it is wound up.
- ✓ No personal liability of the partner for debts of the LLP.
- ✓ Separate legal entity - can own property, can sue and be sued in its name.

# ADVANTAGES

- ✓ Liability of Partners to contribute at the time of winding up limited to the amount recorded in the LLP Agreement.
- ✓ Not subject to full financial reporting and disclosure requirements.
- ✓ Not required to have a Memorandum of Association - The organization and operations are on the basis of a mutual agreement.
- ✓ Easy to exit and wind up and withdraw capital.
- ✓ Tax advantage vis-à-vis a corporate entity.

# DISADVANTAGES

- × Compulsory filing of accounts with Registrar - Loss of Privacy
- × Annual declaration of solvency required to be filed with Registrar.
- × A detailed LLP agreement is required to prevent the application of default provisions.
- × Transfer of ownership interest not as easy as in a corporate entity.
- × Piercing of the Veil of LLP Possible - in cases where it is a sham or a device created to defraud the creditors.
- × Cannot be Listed.
- × Cannot be used for Non Profit Activities and NBFC Business.

# LLP ACT 2008

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## KEY CONCEPTS

## Designated Partner (Sec 7, 8 and 9)

- Sec 2(1)(j) - Designated Partner (DP) means a Partner designated under Sec.7 as a DP.
- According to Sec 7, minimum of 2 DPs required of which atleast 1 DP needs to be an Indian Resident.
- In a LLP where all partners are body corporates, atleast 2 individuals who are nominees of such body corporates to act as DP.
- Flexibility to appoint, change or remove DPs by way of LLP Agreement and for delegation of work amongst DPs.



# Designated Partner (Sec 7, 8 and 9)

- Compliances
  - ❖ Individual to give his prior consent to the LLP to act as DP
  - ❖ LLP to file the particulars of DP within 30 days of his appointment, termination or changes in particulars. [Sec 7(4)]
  - ❖ DP to obtain a DPIN (i.e. Designated Partner Identification Number) - similar to DIN for Director.

# Designated Partner (Sec 7, 8 and 9)

- Liabilities of a DP (Sec 8)
  - ❖ All compliance responsibilities of the LLP are with the DP.
    - [e.g. filing of documents with registrar, appointment of auditors, signing of accounts]
  - ❖ Liable to all the penalties that are imposed on the LLP

# Designated Partner (Sec 7, 8 and 9)

- Changes in DP (Sec 9)
  - ❖ In case of a vacancy in the office of DP, the LLP to appoint new DP within 30 days.
  - ❖ If at any time there are no DPs or only 1 DP, each partner of the LLP shall be deemed to be a DP.

## Designated Partner (Sec 7, 8 and 9)

- Penalties for contravention of Sec 7, 8 or 9 (Sec 10)
  - ❖ For contravention of Sec 7(1) - Minimum Penalty of Rs. 10,000 and maximum of Rs. 5,00,000
  - ❖ For contravention of Sec 7(4), 8 or 9 - Minimum Penalty of Rs. 10,000 and maximum of Rs. 1,00,000
  - ❖ Penalty to be levied on the LLP as well as the Partners.

# INCORPORATION OF LLP

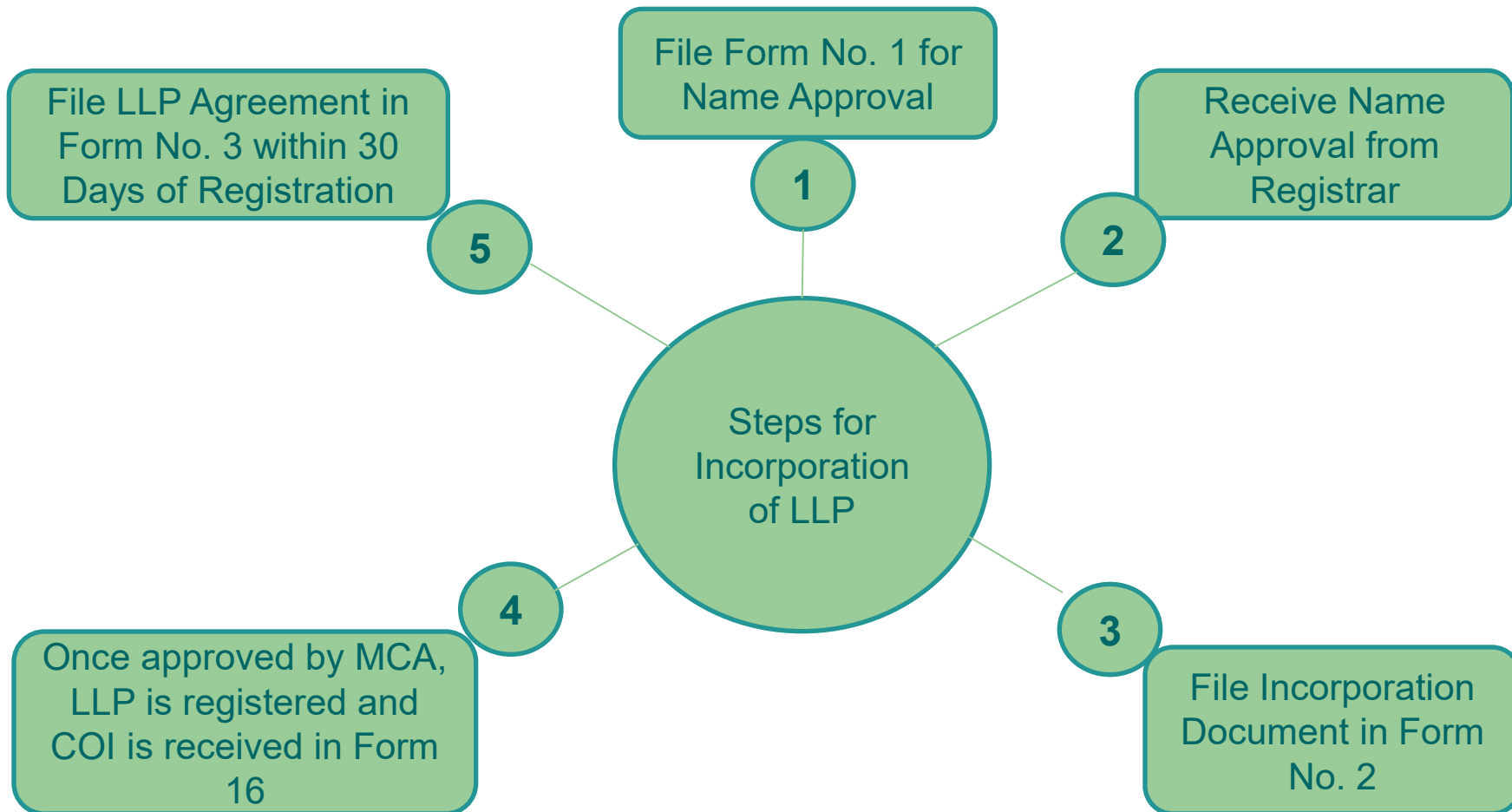
- Requirements
  - ❖ **Partners** - Minimum 2 DPs required. No limit on maximum partners.
  - ❖ **Capital** - No Limit on minimum and maximum capital contribution
  - ❖ **Name** - Atleast 2 proposed names are required.
  - ❖ **LLP Agreement** - providing the Name, Object, profit sharing ratio, powers and duties of partners, contribution by partners, interest or remuneration payable to partners, duration of LLP, Winding up procedure etc.

No Need to file LLP Agreement at time of incorporation - can be filed within 30 days of incorporation.

# INCORPORATION OF LLP

- Requirements Contd...
  - ❖ Documents
    - ID, Address and Photos of all DPs and Partners.
    - Where a Partner is a body corporate, copy of the resolution authorizing the body corporate to become a partners.
    - Address proof of the registered office of the LLP.
    - Subscribers sheet.
    - Consent of DPs.
    - Details of LLPs / Companies where the partner is a Partner / Director.

# INCORPORATION OF LLP - PROCEDURE



# LLP AGREEMENT

- LLP Agreement forms the backbone for the functioning on the LLP.
- LLP Agreement sets out the terms on which the LLP is to conduct its day to day activities.
- If the LLP Agreement is not executed, Schedule 1 to the LLP Act shall apply as regards the mutual rights and obligations of the partners.
- Advisable to execute a comprehensive LLP Agreement as default provisions of Schedule 1 shall apply to any matter not covered by the LLP Agreement.



# LLP AGREEMENT BASIC CLAUSES

- Name Clause
- Definition and Interpretation clause.
- Registered Office Clause
- Capital Clause
- Duration of the LLP
- Object Clause
- Rights of the Partners

# LLP AGREEMENT BASIC CLAUSES

- Duties and obligations of partners.
- Manner of admission, retirement or expulsion of partners.
- Remuneration and interest payable to partners.
- Provisions relating to maintaining accounting records and books of accounts.
- Provisions relating to Audit of Accounts and appointment of Auditors.

# LLP AGREEMENT BASIC CLAUSES

- Arbitration Clause.
- Provisions relating to holding of meetings, formation of committees.
- Indemnity clause.
- Borrowing powers.
- Provisions relating to Winding up and Dissolution of the LLP.

# CAPITAL CONTRIBUTION (SEC 32 & 33)

- Unlike Companies, there is no requirement of Minimum or Maximum amount of capital contribution by Partners for incorporating an LLP.
- Contribution can be in tangible or intangible form or can consist of movable or immovable property or a can be a contract for services performed or to be performed.
- Each partner shall bring in contribution into LLP as agreed between them in the LLP Agreement.

# CAPITAL CONTRIBUTION (SEC 32 & 33)

- Monetary value of the contribution of each partner is required to be accounted for and disclosed in the Accounts of the LLP.
- Where the contribution is any form other than money, it is advisable to get the same valued by a CA / Cost Accountant or an approved valuer.
- A creditor who extends credit to the LLP relying upon such obligation described in the LLP agreement can enforce such obligation against the partner (unless he has notice of any compromise between the partners).

# ACCOUNTS AND AUDIT (SEC 34)

- Specific books of accounts that an LLP is required to maintain is not prescribed. What is prescribed is that an LLP may maintain such books so as to
  - disclose the financial position of the LLP at any time with reasonable accuracy.
  - enable the DPs to ensure that the Accounts and Solvency Statement complies with the requirement of the Act.
  - Books to contain record of
    - all assets and liabilities of the LLP,
    - Statements of cost of goods purchased / sold by the LLP and WIP and FG of the LLP.
    - Particulars of receipts and expenses of the LLP.

# ACCOUNTS AND AUDIT (SEC 34)

- Books of Accounts should be maintained by following the Double entry system of book keeping.
- Accounts may be maintained either on Cash or Accrual Basis of Accounting.
- LLP to prepare and file with the Registrar within 30 days from end of 6 months of the FY, a Statement of Accounts and Solvency in Form No. 8.
- Form 8 needs to be signed by all the DPs.

# ACCOUNTS AND AUDIT (SEC 34)

- LLP is required to get its accounts audited by a Chartered Accountant in the following scenarios:
  - If the turnover of the LLP > 40 Lacs; OR
  - If the contribution by the Partners > 25 Lacs
  
- Penalty for failure to maintain books of accounts / File Form 8 / Get the Accounts Audited -
  - On LLP Rs. 25,000 to Rs. 5 Lacs; AND
  - On DP Rs. 10,000 to Rs. 1 Lac



# ASSIGNMENT OF PARTNER'S RIGHTS (SEC 42)

- Rights of Partner in an LLP are assignable to a 3<sup>rd</sup> Party either wholly or in part.
- Such an assignment only gives the assignee a right to a share in profits and losses of the LLP and to receive distributions under the LLP Agreement.
- Assignment does not imply disassociation of partner or dissolution of LLP.
- The assignee cannot participate in the management or conduct of the LLP Business.
- The assignee cannot access information concerning the transactions of the LLP.

# INVESTIGATION OF THE AFFAIRS OF LLP (SEC 43 to 54)

- When Can the Affairs of the LLP be subject to investigation?
  - ❖ By the Order of the Tribunal [Sec43(1)(a)]
  - ❖ By the Order of any Court [Sec 43(1)(b)].
  - ❖ By the Central Government [Sec 43(2) & (3)]
- In all the above cases, the Inspectors shall be appointed by the Central Government only.

# INVESTIGATION OF THE AFFAIRS OF LLP (SEC 43 to 54)

- Investigation by the Tribunal u/s 43 (1) (a)
  - ❖ Such an Order may be made suo-moto; OR
  - ❖ On Application by atleast 1/5<sup>th</sup> of the partners.
    - Partners to give evidence to Tribunal to justify the need for investigation.
    - Central Government may ask such partners to provide security for meeting the costs of the investigation.

# INVESTIGATION OF THE AFFAIRS OF LLP (SEC 43 to 54)

- Investigation by Central Government u/s 43 (2) & (3)
  - ❖ On Application by atleast 1/5<sup>th</sup> of the partners
    - Partners to give evidence to justify the need for investigation.
    - Central Government may ask such partners to provide security for meeting the costs of the investigation.
  - ❖ On Application by the LLP.
  - ❖ Suo- Moto by the Central Government.

# INVESTIGATION OF THE AFFAIRS OF LLP (SEC 43 to 54)

- Suo-Moto Investigation by Central Government
  - ❖ Where the business of the LLP is being run with the
    - Intent to defraud its creditors or partners or any other person; OR
    - Fraudulent or unlawful purpose; OR
    - In an oppressive manner to some or any of the partners; OR
    - LLP business is not being conducted in accordance with the provisions of the Act.
    - On receipt of a report from Registrar or any other regulatory agency.

# INVESTIGATION OF THE AFFAIRS OF LLP (SEC 43 to 54)

- Powers of the Inspector (Sec 46 to 49):
  - ❖ Investigation (Sec 46)
    - To investigate the affairs of the LLP.
    - To investigate any partner / DP of the LLP
    - To investigate the affairs of any entity associated (past / present) with the LLP.
    - To investigate any former partner / DP of the LLP

# INVESTIGATION OF THE AFFAIRS OF LLP (SEC 43 to 54)

- Powers of the Inspector (Contd..)
  - ❖ Examination on Oath (Sec 47)
    - Examine on oath any partner / DP of the LLP or any former partner / DP.
    - Any other person in relation to the affairs of the LLP or any other entity.
  - ❖ Seizure of Documents (Sec 48) - Only after obtaining permission of the Judicial / Metropolitan Magistrate.
  - ❖ Report his findings to the Central Government (Sec 49)

# INVESTIGATION OF THE AFFAIRS OF LLP (SEC 43 to 54)

- Findings of the Inspector
  - ❖ Prosecution of partner / former partner / DP or any other person (Sec 50).
  - ❖ File a petition before the Tribunal to wind up the LLP (Sec 51).
  - ❖ Initiate recovery proceedings for: (Sec 52)
    - Recovery of any damages on account of fraud or other misconduct.
    - Recovery of any property of the LLP which has been misapplied / wrongfully retained.



# INVESTIGATION OF THE AFFAIRS OF LLP WHISTLE BLOWER (SEC 31)

- If during any investigation or inspection any partner or employee:
  - Assists the investigation by providing useful information of such LLP or
  - Provides information (need not be during investigation) which leads to LLP / any partner / any employee being convicted under LLP Act or any other Act.
  
- THEN
  - Such a partner or employee may be awarded reduced penalty or penalty may be waived.

## FOREIGN LLP (SEC 59)

- Section 2(m) defines foreign LLP as an LLP that is
  - formed, incorporated or registered outside India; AND
  - which establishes a place of business in India.
- RBI permission required for establishing place of business in India.
- File Form 27 within 30 days of establishing a place of business in India.
- File Form 28 for any changes to the LLP in the home country.
- File Form 29 for any changes to the LLP in India (including closure of place of business)

## CONVERSION OF FIRM INTO LLP (SEC 55 and 2<sup>nd</sup> SCHEDULE)

- All the partners of the firm shall become the Partners in LLP (and no one else).
- Once the Firm is converted into LLP, all the assets, liabilities, obligations, commitments and rights shall be transferred to the LLP by operation of Law.
- **Interest of Creditors are protected** - The partner of the firm that has converted into LLP shall continue to be personally liable (jointly and severally with the LLP) for all debts incurred by the firm prior to conversion.


## CONVERSION OF FIRM INTO LLP (SEC 55 and 2<sup>nd</sup> SCHEDULE)

- For conversion, the Partners need to file Form No. 17 with the Registrar alongwith the following documents:
  - Consent of all the partners.
  - Statement of assets and liabilities of the firm duly certified by a Chartered Accountant.
  - Copy of the latest IT Return.
  - Complete list of pending legal cases in any court / tribunal.
  - List of all creditors and their consent to the conversion.

## CONVERSION OF FIRM INTO LLP (SEC 55 and 2<sup>nd</sup> SCHEDULE)

- Once the Registrar is satisfied with the documents filed, he shall register the documents and issue a certificate of registration in Form 19.
- If the Registrar refuses to register the conversion, an appeal can be filed before the Tribunal within 60 days.
- Upon successful conversion, LLP should intimate the concerned ROF about the conversion.
- Legal proceedings pending on the date of conversion to continue in the name of the LLP.

## CONVERSION OF FIRM INTO LLP (SEC 55 and 2<sup>nd</sup> SCHEDULE)

- Tax Implications on Conversion of Firm into LLP ?
- Express Provisions to provide that conversion of Company into LLP is not regarded as transfer (Sec 47(xiiib)).
- Similar provisions absent for a Firm. 
- Can Section 45 (4) apply?

# CONVERSION OF COMPANY INTO LLP (SEC 55 & 56 and 3<sup>rd</sup> and 4<sup>th</sup> SCHEDULE)

- Conversion of Private Limited Company (Sec 55 and 3<sup>rd</sup> Schedule)
- Conversion of Unlisted Public Company (Sec 56 and 4<sup>th</sup> Schedule)
- Conversion Possible only if -
  - All the shareholders of the company become partners (and no one else)
  - There is no security interest in the assets in force at the time of application.

# CONVERSION OF COMPANY INTO LLP (SEC 55 & 56 and 3<sup>rd</sup> and 4<sup>th</sup> SCHEDULE)

- For conversion, Form No. 18 needs to be filed with the Registrar alongwith the following documents:
  - Consent of all the shareholders.
  - Statement of assets and liabilities of the company duly certified by the Auditor.
  - Copy of the latest IT Return.
  - Complete list of pending legal cases in any court / tribunal.
  - List of all creditors and their consent to the conversion.
  - General Notice in Newspaper seeking objections if any (Not Mandatory)



# CONVERSION OF COMPANY INTO LLP (SEC 55 & 56 and 3<sup>rd</sup> and 4<sup>th</sup> SCHEDULE)

- Tax Implications on Conversion of Company into LLP ?
- Express Provisions to provide that conversion of Company into LLP is not regarded as transfer, subject to fulfilment of following conditions (Sec 47(xiiib)).
  - All assets and liabilities are transferred to LLP
  - All shareholders become partners of LLP
  - Profit sharing ratio and capital contribution ratio same as the proportion of their shareholding in the company.
  - No other consideration received by the shareholders.

## CONVERSION OF COMPANY INTO LLP (SEC 55 & 56 and 3<sup>rd</sup> and 4<sup>th</sup> SCHEDULE)

- Conditions subject to which conversion of company into LLP not regarded as transfer (Contd.)
  - PSR of the shareholders in the LLP to remain minimum of 50% in the 5 years from date of conversion.
  - Turnover of company does not exceed Rs. 60 Lacs in any 3 years preceding the year of conversion.
  - Book Value of assets does not exceed Rs. 5 Crore in any 3 years preceding the year of conversion.

## WINDING UP AND DISSOLUTION OF LLP (SEC 51, 63 – 65)

- Winding up u/s 51 on a report from the Inspector if it is found that
  - the LLP exists for defrauding any creditor / partner / any other person; or
  - LLP is for an unlawful purpose; or
  - LLP is conducting its affairs in an oppressive manner

Central Government may file a petition before the Tribunal for Winding up.

# WINDING UP AND DISSOLUTION OF LLP (SEC 51, 63 – 65)

- Winding up u/s 63 (Voluntary Winding Up)
  - Resolution for voluntary winding up by 3/4<sup>th</sup> majority.
  - If there are any creditors outstanding, the approval of 2/3<sup>rd</sup> (in value) of creditors required.
  - Majority of the DPs to make a declaration on affidavit that the LLP will be able to pay the debts out of sale proceeds of assets.
  - Appointment of the Liquidator. Powers of partners to cease after appointment of liquidator.
  - Liquidator to give quarterly report showing the progress of liquidation to partners and creditors.
  - Final report upon completion of liquidation proceedings.

# WINDING UP AND DISSOLUTION OF LLP (SEC 51, 63 – 65)

- Winding up u/s 64 (Winding Up by the Tribunal)
  - If the LLP decides to be wound up by the Tribunal.
  - If the number of partners have been reduced below 2 for a period exceeding 6 months.
  - LLP has acted against the sovereignty and integrity of India.
  - Default in filing Form 8 or Form 11 (Annual Return) for 5 consecutive years.
  - If in the opinion of Tribunal it is just and equitable.

# STRIKING OFF LLP NAME (SEC 75)

- Section-75 empowers Registrar to strike off the name of LLP
  - Suo Moto
  - On application made by LLP
- Suo moto action of Registrar: - LLP is defunct for at least 2 years.
- Application by LLP - LLP is defunct for at least 1 year (Form 24).
- NOC from concerned Govt. authority if regulated by them.
- Suo moto notice of Registrar / Application of LLP to be placed on MCA web-site for a period of 1 month before publication of notice in Official Gazette.

# Taxation of LLP

- The Finance Bill (No.2), 2009 has amended the definition of firm to include LLP. The status of LLP is equal to the firm.
- The status of a partner of LLP is equal to the partner of a firm.
- The taxable income of LLP will be subjected to tax at the maximum marginal rate being 30%.
- Interest and Remuneration payable to partners, subject to provisions of Section 40(b) will be allowed as deduction while computing the taxable income of LLP.

# Taxation of LLP

- The distribution of income by LLP is not subjected to dividend distribution tax. LLP is not subjected to double taxation.
- In the hands of the partner the amount received from LLP as share of profit is exempt u/s 10(2A) of Income Tax Act, 1961.
- Interest and remuneration received by the partners of LLP will be subjected to tax under the head “Income from Business or Profession”.



# Taxation of LLP

- LLP is not liable to pay MAT. Certain LLPs are however liable to pay AMT u/s 115JC @ 18.5 % on its adjusted total income,
- Adjusted total income include total income as increased by deduction claimed u/chap VIA Part C, Section 10AA or u/s 35AD.
- Tax Paid under AMT entitled to credit u/s 115JD for 10 years.

# THANK YOU

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# TAXATION OF LLP - RESOURCES

- **Memorandum Explaining the Finance Bill 2009.**

*“As an LLP and a general partnership are being treated as equivalent (except for recovery purposes) in the Act, the conversion from a general partnership firm to an LLP will have no tax implications if the rights and obligations of the partners remain the same after conversion and if there is no transfer of any asset or liability after conversion.”*

