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EXAM ORIENTED MARATHON NOTES

Chapter 4: The Limited Liability Partnership Act, 2008

Q.1 "LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership". Explain. [May 19, 5 Marks] [July 21 - 5 Marks] [MTP Oct 20 - 5 Marks] [MTP Oct 21 - 5 Marks] CS LLM Arjun Chhabra

Answer:

LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership

Limited Liability: Every partner of a LLP is, for the purpose of the business of LLP, the _____, but _____ (Section ____ of the LLP Act, 2008). The liability of the partners will be _____ in the LLP, while the LLP itself will be liable for the _____.

Flexibility of a partnership: The LLP allows its members the _____ their _____ as a partnership based on a _____. The LLP form enables entrepreneurs, professionals and enterprises providing services of any kind or engaged in scientific and technical disciplines, to form _____ suited to their requirements. Owing to flexibility in its structure and operation, the LLP is a suitable vehicle for _____ and for investment by venture capital.

Q.2 Who are the individuals which shall not be capable of becoming a partner of a Limited Liability Partnership? [RTP Nov 19] CS LLM Arjun Chhabra

Answer:

Partners (Section ____ of Limited Liability Partnership Act, 2008): Any _____ or _____ may be a partner in a LLP.

However, an individual shall not be capable of becoming a partner of a LLP, if—

- (a) he has been found to be of _____ by a _____ and the finding is in force;
- (b) he is an _____; or
- (c) he has applied to be _____ and his application is pending.

For knowledge: An Undischarged Insolvent or Undischarged Bankrupt is a person who has submitted a bankruptcy petition to the court of law and whose debts are still being assessed by the court. The court will allow the person to submit all the persons assets and liabilities, list of creditors, list of debtors and will evaluate the persons ability to pay off, which creditors to pay, how much to pay etc.

Until the court decides all of the above, the person is an undischarged bankrupt or insolvent.

Once the court passes appropriate orders - the bankruptcy petition is disposed off and the person will be discharged by a court. Once this is done, the person becomes a discharged bankrupt or discharged insolvent.

Q.3 What do you mean by Designated Partner? Whether it is mandatory to appoint Designated partner in a LLP? [MTP Oct 19, 5 Marks] [RTP Nov 20] [RTP May 21] [MTP Nov 21 - 5 Marks]

Answer:

Designated Partner [Section 2(j)]: "Designated partner" means any partner designated as such pursuant to section 7 of the LLP Act, 2008.

According to section 7:

- (i) Every LLP shall have _____ who are _____ and at least one of them shall be a resident in India.
- (ii) If in LLP, 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 LLP or nominees of such bodies corporate shall act as designated partners.
- (iii) Resident in India: 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 182 days during the immediately preceding one year.

Q.4 Explain the essential elements to incorporate a Limited Liability Partnership and the steps involved therein under the LLP Act, 2008. [Nov 18, 5 Marks] CS LLM Arjun Chhabra

Related Question: What are the essential elements to form a LLP in India as per the LLP Act, 2008? [May 18, 5 Marks] [RTP Nov 18]

Related Question: State the meaning of Limited Liability Partnership (LLP). What are the relevant steps to incorporate LLP? [MTP March 18, 5 Marks] [MTP Oct 18, 5 marks] [MTP April 19, 5 Marks]

Answer:

Meaning: A LLP is a _____ with _____.

It is an _____ that not only gives the _____ at _____ but allows its partners the flexibility of organising their internal structure as a traditional partnership.

The LLP is a separate legal entity and, while the LLP itself will be liable for the full extent of its assets, the liability of the partners will be limited.

Essential elements to incorporate Limited Liability Partnership (LLP)- Under the LLP Act, 2008, the following elements are very essential to form a LLP in India:

- (i) To _____ in the form prescribed with the _____;

- (ii) To have _____ for incorporation of LLP [Individual or body corporate];
- (iii) To have _____ to which all communications will be made and received;
- (iv) To appoint _____ who will be responsible for number of duties including doing of all acts, matters and things as are required to be done by the LLP. Atleast one of them should be resident in India.
- (v) A person or nominee of body corporate _____ as designated partner of LLP should hold a _____ allotted by _____.
- (vi) To _____ between the _____ or between the _____. In the absence of any agreement the provisions as set out in First Schedule of LLP Act, 2008 will be applied.
- (vii) **LLP Name.**

Steps to incorporate LLP:

1. Name reservation:

- The first step to incorporate Limited Liability Partnership (LLP) is _____ of LLP.
- Applicant has to file _____ of the name of a LLP business.

2. Incorporate LLP:

- After reserving a name, user has to file _____ Limited Liability Partnership (LLP).
- e-Form 2 contains the details of LLP _____ details and _____ of the partners/designated partners to act as partners/ designated partners

3. LLP Agreement

- Execution of LLP Agreement is _____ as per Section ___ of the Act.
- LLP Agreement is required to be filed with the registrar in **e-Form 3** within 30 days of incorporation of LLP.

Q.5 What do you mean by Limited Liability Partnership (LLP)? What are the advantages for forming a LLP for doing business? [RTP May 18] [RTP May 19] CS LLM Arjun Chhabra

Answer:

Meaning- Same as above.

Since LLP contains elements of both 'a _____' as well as 'a _____ structure' LLP is called a _____ between a company and a partnership.

Advantages of LLP Form:

- is _____ and _____ on the basis of an agreement.
- provides _____ without _____ requirements.
- Easy to _____
- All partners _____
- Flexible capital structure
- Easy to _____

Characteristic/Salient Features of LLP

1. **LLP is a _____**: Section 2(1)(d) of the LLP Act, 2008 provides that a LLP is a body corporate _____ under this Act and is a _____ and shall have _____.

Therefore, any change in the partners of a LLP shall not affect the existence, rights or liabilities of the LLP.

Section 3 of LLP Act provides that a LLP is a body corporate formed and incorporated under this Act and is a legal entity separate from that of its partners.

2. **Perpetual Succession**: The LLP can continue its existence irrespective of changes in partners. Death, insanity, retirement or insolvency of partners has no impact on the existence of LLP. It is capable of entering into contracts and holding property in its own name.

3. **Separate Legal Entity**: The LLP is a separate legal entity, is liable to the full extent of its assets but liability of the partners is limited to their agreed contribution in the LLP. In other words, creditors of LLP shall be the creditors of LLP alone.

4. **Mutual Agency**: Further, _____ is _____ on account of the _____ of other partners, thus individual partners are shielded from joint liability created by another partner's wrongful business decisions or misconduct. **In other words, all partners will be the agents of the LLP alone. No one partner can bind the other partner by his acts.**

5. **Artificial Legal Person**: A LLP is an artificial legal person because it is created by a legal process and is clothed with all rights of an individual. It can do everything which any natural person can do, except of course that, it cannot be sent to jail, cannot take an oath, cannot marry or get divorce nor can it practice a learned profession like CA or Medicine. A LLP is invisible, intangible, immortal (it can be dissolved by law alone) but not fictitious because it really exists.

- 6. Common Seal:** A LLP being an artificial person can act through its partners and designated partners. LLP may have a common seal, if it decides to have one [Section 14(c)]. Thus, it is not mandatory for a LLP to have a common seal. It shall remain under the custody of some responsible official and it shall be affixed in the presence of at least 2 designated partners of the LLP.
- 7. Limited Liability:** Every partner of a LLP is, for the purpose of the business of LLP, the agent of the LLP, but not of other partners (Section 26). The liability of the partners will be limited to their agreed contribution in the LLP. Such contribution may be of tangible or intangible nature or both.
- 8. Management of Business:** The partners in the LLP are entitled to manage the business of LLP. But only the _____ are _____ for _____.
- 9. Minimum and Maximum number of Partners:** Every LLP shall have least two partners and shall also have at least 2 individuals as designated partners, of whom at least one shall be resident in India. There is no maximum limit on the partners in LLP.
- 10. Business for Profit Only:** The essential requirement for forming LLP is carrying on a lawful business with a view to earn profit. Thus, LLP cannot be formed for charitable or non-economic purpose.

Q.6 State the rules regarding the registered office of a Limited Liability Partnership (LLP) and change therein as per provisions of the Limited Liability Partnership Act, 2008. [Dec 21 - 5 Marks]

Answer:

Registered office of LLP and change therein (Section ____):

(1) Every LLP shall have a registered office to which _____ may be _____ and where they shall be received.

(2) A document may be _____ on a _____ or a _____ or _____ thereof by sending it by _____ under a _____ or by _____ or by any other manner, as may be prescribed, at the _____ and any other address specifically declared by the LLP for the purpose in such form and manner as may be prescribed.

(3) A LLP 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 LLP contravenes any provisions of this section, the LLP and its every partner shall be punishable with fine which shall not be less than _____ but which may extend to _____.

Q.7 What are the effects of registration of LLP? [RTP Nov 19] CS LLM Arjun Chhabra

Effect of registration (Section 14 of Limited Liability Partnership Act, 2008):

On registration, a LLP 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.

Q.8 What is the procedure for changing the name of Limited Liability Partnership (LLP) under the LLP Act, 2008? [RTP May 20] CS LLM Arjun Chhabra

Answer:

Change of name of LLP (Section 17):

(1) _____ anything contained in sections 15 and 16, where the Central Government is _____ that a LLP has been _____ (whether through _____ or _____ and whether _____ or by a _____) under a name which –

- (a) is a _____ to in sub-section (2) of section 15; or
- (b) is _____ with or _____ the name of any other LLP or body corporate or other name as to be likely to be _____ for it,

the Central Government may _____ such LLP to _____, and the LLP shall _____ with the said direction **within 3 months** after the date of the direction or such longer period as the Central Government may allow.

(2)(i) Any LLP which _____ with a direction given under sub-section (1) shall be _____ which shall not be less than _____ but which may extend to _____.

(ii) The _____ of such LLP shall be punishable with fine which shall not be less than _____ but which may extend to _____.

Q.9 Discuss the conditions under which LLP will be liable and not liable for the acts of the partner. [Nov 19, 5 Marks]

Answer:

Conditions under which LLP will be liable [Section _____ () of the LLP Act, 2008]

The LLP is liable _____ of a LLP is _____ to any person as a result of a _____ or _____ on his part in the _____ of the LLP or _____.

Conditions under which LLP will not be liable [Section 27(1) of the LLP Act, 2008]

A LLP is not bound by anything done by a partner in dealing with a person if—

- a) the partner in fact has _____ to act for the LLP in doing a particular act; and
- b) the person _____ or _____ him to be a _____ of the LLP.

(3) An obligation of the LLP whether arising in contract or otherwise, shall be solely the obligation of the LLP.

4) The liabilities of the LLP shall be met out of the property of the LLP.

Q.10 State the circumstances under which a LLP and its partners may face unlimited liability under the Limited Liability Partnership Act, 2008. [Jan 21 - 5 Marks]

Answer:

(1) In case of _____:

- In the _____ of an _____ by a _____, or any of its _____,
- with _____ of the LLP or any _____, or for any _____ purpose,
- the liability of the LLP and partners who acted with intent to defraud creditors or for any fraudulent purpose
- shall be _____ for all or any of the debts or other liabilities of the LLP.

However, in case any such act is carried out by a partner, the LLP is liable to the same extent as the partner unless it is established by the LLP that such act was without the knowledge or the authority of the LLP.

(2) Where any business is carried on with such intent or for such purpose as mentioned in sub-section (1), _____ a party to the carrying on of the business in the manner aforesaid shall be punishable with

- _____ for a term which may extend to _____ years and
- with fine which shall not be less than Rs. _____ but which may extend to Rs. _____.

(3) Where a _____ or any _____ or _____ or _____ of such LLP has _____ of the LLP in a _____, then _____ to any _____ which may arise under any law for the time being in force, the LLP and any such partner or designated partner or employee shall be liable to pay _____ to any person who has suffered any loss or damage by reason of such conduct. However, such LLP shall not be liable if any such partner or designated partner or employee has acted fraudulently without knowledge of the LLP.

Q.11 Explain the circumstances in which LLP may be wound up by Tribunal under the LLP Act, 2008. [RTP May 20] [Dec-20 5-Marks]

Answer:

Circumstances in which LLP may be wound up by Tribunal (Section ____ of the LLP Act, 2008):
A LLP may be wound up by the Tribunal:

- (a) if the LLP decides that LLP be wound up by the Tribunal;
- (b) if, for a period of more than six months, the number of partners of the LLP is reduced below two;
- (c) if the LLP is unable to pay its debts;
- (d) if the LLP has acted against the interests of the sovereignty and integrity of India, the security of the State or public order;
- (e) if the LLP has made a default in filing with the Registrar the Statement of Account and Solvency or annual return for any five consecutive financial years; or
- (f) if the Tribunal is of the opinion that it is just and equitable that the LLP be wound up.

Q.12 List the differences between the Limited Liability Partnership and the Limited Liability Company. [RTP May 18] [MTP March 19] CS LLM Arjun Chhabra

Q.13 Differentiate between a LLP and a partnership firm? [RTP Nov 18] [RTP Nov 21] CS LLM Arjun Chhabra