



# Business Laws

## The Limited Liability Partnership Act, 2008



## CHAPTER-4

# THE LIMITED LIABILITY PARTNERSHIP ACT, 2008

### INTRODUCTION

- Limited liability partnership bill got assent on 7th January 2009.
- Limited liability partnership Act, 2008 came into force on 31st March 2009.
- It is applicable to whole of India.
- Administrative Authority is ministry of corporate affairs & registrar of companies.
- Provision of partnership act do not apply.
- It is a partnership formed & registered under LLP act, 2008.

### THEORY QUESTIONS

**Q-1 Explain the Meaning of LLP. State its Characteristics?**

**Ans. Meaning of LLP**

- A LLP is a new form of legal business entity with limited liability.
- It is an alternative corporate business vehicle that not only gives the benefits of limited liability at low compliance cost 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.
- Since LLP contains elements of both 'a corporate structure' as well as 'a partnership firm structure' LLP is called a hybrid between a company and a partnership.

**Essentials of LLP**

1. **LLP is a body corporate:** 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:** 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:** 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.
4. **Mutual Agency:** Further, no partner is liable on account of the independent or un-authorized actions of other partners. All partners will be the agents of the LLP alone. No one partner can bind the other partner by his acts.

5. **LLP Agreement:** Mutual rights and duties of the partners within a LLP are governed by an agreement between the partners. The LLP Act, 2008 provides flexibility to partner to devise the agreement as per their choice. In the absence of any such agreement, the mutual rights and duties shall be governed by the provisions of the LLP Act, 2008.
6. **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.
7. **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. Thus, it is not mandatory for a LLP to have a common seal.
8. **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
9. **Management of Business:** The partners in the LLP are entitled to manage the business of LLP. But only the designated partners are responsible for legal compliances.
10. **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.
11. **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.
12. **Investigation:** The Central Government shall have powers to investigate the affairs of an LLP by appointment of competence authority for the purpose.
13. **E-Filing of Documents:** Every form or application of document required to be led or delivered under the act and rules made thereunder, shall be led in computer readable electronic form on its website [www.mca.gov.in](http://www.mca.gov.in) and authenticated by a partner or designated partner of LLP by the use of electronic or digital signature.

**Q-2 What are the essential elements to incorporate LLP? Also state the steps to incorporate LLP?**

**Ans.** Under the LLP Act, 2008, the following elements are very essential to form a LLP in India:

- ◆ To complete and submit incorporation document in the form prescribed with the Registrar electronically
- ◆ To have at least two partners for incorporation of LLP [Individual or body corporate]
- ◆ To have registered office in India to which all communications will be made and received
- ◆ To appoint minimum two individuals as designated partners 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
- ◆ A person or nominee of body corporate intending to be appointed as designated partner of LLP should hold a Designated Partner Identification Number (DPIN) allotted by MCA
- ◆ To execute a partnership agreement between the partners inter se or between the LLP and its partners. In the absence of any agreement the provisions as set out in First Schedule of LLP Act, 2008 will be applied
- ◆ LLP Name. The LLP cannot have the same name with any other LLP, Partnership Firm or Company
- ◆ To create a LLP proper formation documents must be led with the registrar along with the necessary filing fees.

**Steps to Incorporate LLP**1. **Name Reservation**

- ◆ The first step to incorporate Limited Liability Partnership is reservation of name of LLP.
- ◆ Applicant has to file e-Form 1, for ascertaining availability and reservation of the name of a LLP business.

2. **Incorporate LLP**

- ◆ After reserving a name, user has to file e- Form 2 for incorporating a new Limited Liability Partnership
- ◆ e-Form 2 contains the details of LLP proposed to be incorporated, partners'/ designated partners' details and consent of the partners/designated partners to act as partners/ designated partners

3. **LLP Agreement**

- ◆ Execution of LLP Agreement is mandatory as per Section 23 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-3 State the Contents of LLP Agreement ?**

**Ans.** Following are the contents of LLP Agreement

1. Name of LLP
2. Name & address of Partners & Designated Partners
3. Form of contribution & interest on contribution
4. Profit sharing ratio
5. Remuneration of Partners
6. Rights & Duties of Partners
7. Proposed Business
8. Rules for governing LLP.

**Q-4 Difference Between LLP and a Partnership Firm ?**

**Ans.**

	<b>Basis</b>	<b>LLP</b>	<b>Partnership Firm</b>
1.	Regulating Act	The Limited Liability Partnership Act, 2008	The Indian Partnership Act, 1932.
2.	Body corporate	It is a body corporate.	It is not a body corporate.
3.	Separate legal entity	It is a legal entity separate from its members.	It is a group of persons with no separate legal entity.
4.	Creation	It is created by a legal process called registration under the LLP Act, 2008.	It is created by an agreement between the partners.
5.	Registration	Registration is mandatory. LLP can sue and be sued in its own name	Registration is voluntary. Only the registered partnership firm can sue the third parties.

6. Perpetual succession	The death, insanity, retirement or insolvency of the partner(s) does not affect its existence of LLP. Members may join or leave but its existence continues forever	The death, insanity Retirement or insolvency of the partner(s) may affect its existence It has no perpetual succession.
7. Name	Name of the LLP to contain the word limited liability partners (LLP) suffix.	No guidelines. The partners can have as any name as per their choice.
8. Liability	Liability of each partner limited to the extent to agreed contribution except in case of willful fraud.	Liability of each partner is unlimited. It can be extended upto the personal assets of the partners.
9. Mutual agency	Each partner can bind the LLP by his own acts but not the other partners.	Each partner can bind the firm as well as other partners by his own acts.
10. Designated partners	At least two designated partners and partners atleast one of them shall be resident in India.	There is no provision for such under the Indian partnership Act, 1932.
12. Legal compliances	Only designated partners are responsible for all the compliances and penalties under this Act.	All partners are responsible for all the compliances and penalties under the Act.
13. Annual filing of Documents	LLP is required to file:  (i) Annual statement of accounts (ii) Statement of solvency (iii) Annual return with the registration of LLP every year.	Partnership firm is not required to file any annual document with the registrar of firms.
14. Foreign partnership	Foreign nationals can become a partner in a LLP.	Foreign nationals cannot become a partner in a partnership firm.
15. Minor as partner	Minor cannot be admitted to the benefits of LLP.	Minor can be admitted to the benefits of the partnership with the prior consent of the existing partners.

**Q-5 State the Distinction between LLP and Company?****Ans.**

	<b>Basis</b>	<b>LLP</b>	<b>Company</b>
1.	Regulating Act	The LLP Act, 2008.	The Companies Act, 2013.
2.	Members/Partners	The persons who contribute to LLP are known as partners of the LLP. members of the company.	The persons who invest the money in the shares are known as
3.	Internal governance structure	The internal governance structure of a LLP is governed by agreement between the partners.	The internal governance structure of a company is regulated by statute (i.e., Companies Act, 2013).
4.	Name	Name of the LLP to contain the word "Limited Liability partnership" or "LLP" as suffix.	Name of the public company to contain the word "limited" and Private company to contain the word "Private limited" as suffix.
5.	Number of members/ partners	Minimum – 2 members Maximum – No such limit on the members in the Act. The members of the LLP can be individuals/or body corporate through the nominees.	Private company: Minimum – 2 members Maximum – 200 members  Public company: Minimum – 7 members Maximum – No such limit on the members. Members can be organizations, trusts, another business form or individuals.
6.	Liability of members/ partners	Liability of a partners is limited to the extent of agreed contribution except in case of willful fraud.	Liability of a member is limited to the amount unpaid on the shares held by them.
7.	Management	The business of the company managed by the partners including the designated partners authorized in the agreement.	The affairs of the company are managed by board of directors elected by the shareholders.
8.	Minimum number of directors/designated partners	Minimum 2 designated partners.	Private Co. – 2 directors  Public Co. – 3 directors

## CLASS WORK

### MULTIPLE CHOICE QUESTIONS

1. Ministry of Corporate Affairs enforced the LLP Act, with effect from-  
(a) 31st March, 2008 (b) 1st April, 2008  
(c) 31st March, 2009 (d) 1st April, 2009
2. Whether partnership law applies to the LLP-  
(a) Yes (b) No
3. State which of the statement is correct under the Limited Liability Partnership Act, 2008-  
(a) All partners have unlimited liability (b) All partners have limited liability

### THEORETICAL QUESTIONS

1. Examine the concept of LLP.
2. Enumerate the various characteristics of the LLP.
3. State the necessities required for incorporation of the LLP.

### HOME WORK

1. A, a minor, and B a major, want to create a LLP. Give reason whether it is possible under LLP Act, 2008.  
**Ans. Hint :** Minor cannot become a partner in LLP.
2. What are the Liabilities of designated partner of LLP ?  
**Ans. Hint :** Legal Compliances.
3. State the advantages of LLP.  
**Ans. Hint :** Combined benefits of partnership & Company.







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