

SWIFTSCANS FOR CA FOUNDATION JUNE' 23



Dear Students.

The swiftscans contain all the questions of


- RTP - May' 18 to June' 23.
- Question papers - May' 18 - Dec' 22.
- Mock test papers

The swiftscans have been divided chapter wise to make it easier for you to follow. Do try to solve the questions before looking into the answers.


Happy learning and stay motivated.

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Swiftscans – CA foundation Limited Liability Partnership, 2008

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What do you mean by Limited Liability Partnership (LLP)? What are the advantages for forming a LLP for doing business? (RTP May' 18)/ (MT Oct' 18)



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.

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

Advantages of LLP form:

1. LLP is organized and operates on the basis of an agreement.
2. It provides flexibility without imposing detailed legal and procedural requirements
3. It enables professional/technical expertise and initiative to combine with financial risk taking capacity in an innovative and efficient manner.
4. It is easy to form
5. In LLP form, all partners enjoy limited liability
6. Flexible capital structure is there in this form
7. It is easy to dissolve



List the differences between the Limited Liability Partnership and the Limited Liability Company. **(RTP May' 18)/ (MT Aug' 18)/ (MT Mar' 19)/ (MT)**
OR

"A LLP (Limited Liability Partnership) is a type of partnership in which participants' liability is fixed to the amount of money they invest whereas a LLC (Limited Liability Private/Public Company) is a tightly held business entity that incorporates the qualities of a corporation and a partnership". In line of above statement clearly elaborate the difference between LLP and LLC. **(Dec' 22)**



Limited liability Partnership	Company
The LLP Act, 2008.	The Companies Act, 2013.
The persons who contribute to LLP are known as partners of the LLP.	The persons who invest the money in the shares are known as members of the company.
The internal governance structure of a LLP is governed by contract agreement between the partners.	The internal governance structure of a company is regulated by statute (i.e., Companies Act, 2013).
The internal governance structure of a LLP is governed by contract agreement between the partners.	Name of the public company to contain the word "limited" and Pvt. Co. to contain the word "Private limited" as suffix.
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.

Limited liability Partnership	Company
Liability of a partners is limited to the extent of agreed contribution in case of intention is fraud.	Liability of a member is limited to the amount unpaid on the shares held by them.
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.
Minimum 2 designated partners.	Minimum directors Pvt. Co. – 2 directors Public co. – 3 directors



What is Small Limited Liability Partnership as per Limited Liability Partnership (Amendment) Act, 2021? (MT)/ (RTP June' 23)



“Small Limited Liability Partnership [Section 2(ta) of the Limited Liability Partnership Act, 2008]: It means a Limited Liability Partnership—

- i. the contribution of which, does not exceed twenty-five lakh rupees or such higher amount, not exceeding five crore rupees, as may be prescribed; and
- ii. the turnover of which, as per the Statement of Accounts and Solvency for the immediately preceding financial year, does not exceed forty lakh rupees or such higher amount, not exceeding fifty crore rupees, as may be prescribed; or
- iii. which meets such other requirements as may be prescribed and fulfils such terms and conditions as may be prescribed.



State the essential elements to incorporate a LLP. (RTP Nov' 18)/ (May' 18)

OR

Explain the essential elements to incorporate a Limited Liability Partnership and the steps involved therein under the LLP Act, 2008. (Nov' 18)/ (May' 22)



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

- i. To complete and submit incorporation document in the form prescribed with the Registrar electronically;
- ii. To have at least two partners for incorporation of LLP [Individual or body corporate];
- iii. To have registered office in India to which all communications will be made and received;
- iv. 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.
- v. 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.
- vi. 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.
- vii. LLP Name.

Steps to incorporate LLP:

1. Name reservation:
 - The first step to incorporate Limited Liability Partnership (LLP) 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 (LLP).
 - 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.



Differentiate between an LLP and a partnership firm? (RTP Nov' 18)

OR

A and B were friends. Now they have plans of setting up a supermarket in their locality. They are confused as to whether to register as a traditional partnership or as a Limited Liability Partnership. As an advisor, enumerate the differences between the two forms of business highlighting the compliances and other legal formalities. (RTP Dec' 21)



Limited liability Partnership	Partnership
The LLP Act, 2008.	The Indian Partnership Act, 1932.
It is a body corporate.	It is not a body corporate.
It is a legal entity separate from its members.	It is a group of persons with no separate legal entity.
Creation It is created by a legal process called registration under the LLP Act, 2008.	It is created by an agreement between the partners.
Registration is mandatory.	Registration is voluntary.
LLP can sue and be sued in its own name.	Only the registered partnership firm can sue the third parties.
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.
Name of the LLP to contain the word limited liability partners (LLP) as suffix.	No guidelines. The partners can have any name as per their choice.
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.
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.

Limited liability Partnership	Partnership
At least two designated partners and atleast one of them shall be resident in India.	There is no provision for such partners under the Indian partnership Act, 1932.
It may have its common seal as its official signatures.	There is no such concept in partnership
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.
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.
Foreign nationals can become a partner in a LLP.	Foreign nationals cannot become a partner in a partnership firm.
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.



Explain the incorporation by registration of a Limited Liability Partnership and its essential elements under the LLP Act, 2008. (May' 22)



Incorporation by registration (Section 12 of LLP Act, 2008): #

1. When the requirements of section 11 have been complied with, the Registrar shall retain the incorporation document and shall, within a period of 14 days
 - a) register the incorporation document; and
 - b) give a certificate that the LLP is incorporated by the name specified therein.
2. The certificate issued shall be signed by the Registrar and authenticated by his official seal.
3. The certificate shall be conclusive evidence that the LLP is incorporated by the name specified therein.

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 complete and submit incorporation document in the form prescribed with the Registrar electronically;
- ii. To have at least two partners for incorporation of LLP [Individual or body corporate];
- iii. To have registered office in India to which all communications will be made and received;
- iv. 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.
- v. 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.
- vi. 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.
- vii. LLP Name.



What is the meaning of the Limited Liability Partnership? State the various characteristics of it? (RTP May' 19)



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.

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

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.

Characteristic/Salient Features of LLP

1. **LLP is a body corporate:** Section 2(1)(d) of the LLP Act, 2008 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 and shall have perpetual succession. 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, no partner is liable on account of the independent or unauthorized actions 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. **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. A LLP is invisible, intangible, immortal (it can be dissolved by law alone) but not fictitious because it really exists.
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 [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.
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. Such contribution may be of tangible or intangible nature or both.
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. **Compromise or Arrangement:** Any compromise or agreements including merger and amalgamation of LLPs shall be in accordance with the provisions of the LLP Act, 2008.
14. **Conversion into LLP:** A firm, private company or an unlisted public company would be allowed to be converted into LLP in accordance with the provisions of LLP Act, 2008.
15. **E-Filing of Documents:** Every form or application of document required to be filed or delivered under the act and rules made thereunder, shall be filed in computer readable electronic form on its website www.mca.gov.in and authenticated by a partner or designated partner of LLP by the use of electronic or digital signature.
16. **Foreign LLPs:** Section 2(1)(m) defines foreign limited liability partnership “as a limited liability partnership formed, incorporated, or registered outside India which established as place of business within India”. Foreign LLP can become a partner in an Indian LLP.



"LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership". Explain. (Nov' 19)/ (July' 21)/ (MT)/ (RTP May' 22)/ (MT)/ (MT)



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 of the LLP Act, 2008). The liability of the partners will be limited to their agreed contribution in the LLP, while the LLP itself will be liable for the full extent of its assets.

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



Who are the individuals which shall not be capable of becoming a partner of a Limited Liability Partnership? (RTP Nov' 19)



As per section 5 of the Limited Liability Partnership, 2008 any individual or body corporate may be a partner in a LLP.

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

- i. he has been found to be of unsound mind by a Court of competent jurisdiction and the finding is in force;
- ii. he is an undischarged insolvent; or
- iii. he has applied to be adjudicated as an insolvent and his application is pending.



What are the effects of registration of LLP? (RTP Nov' 19)



U/s 14 of the Limited Liability Act, 2008 on registration, a LLP shall, by its name, be capable of—

- i. suing and being sued;
- ii. acquiring, owning, holding and developing or disposing of property, whether movable or immovable, tangible or intangible;
- iii. having a common seal, if it decides to have one; and
- iv. doing and suffering such other acts and things as bodies corporate may lawfully do and suffer.



What do you mean by Designated Partner? Whether it is mandatory to appoint Designated partner in a LLP? (MT Nov' 19)/ (RTP May' 21)/ (MT)/ (MT)



According to section 7:

- i. Every LLP shall have at least two designated partners who are individuals 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.



What is the procedure for changing the name of Limited Liability Partnership (LLP) on the order of the Central Government under the LLP Act, 2008? (**RTP May' 20**)



As per section 17 of LLP Act, 2008 where the Central Government is satisfied that a LLP has been registered under a name which —

- i. Is undesirable; or
- ii. is identical with or too nearly resembles the name of any other LLP or body Corporate or a registered trademark or other name as to be likely to be mistaken for it,

the Central Government may direct such LLP to change its name, and the LLP shall comply with the said direction within 3 months after the date of the direction or such longer period as the Central Government may allow.

Any LLP which fails to comply with a direction shall be punishable with fine which shall not be less than 10,000 but which may extend to 5 Lakhs. The designated partner of such LLP shall be punishable with fine which shall not be less than 10,000 but which may extend to 1 Lakh.



State the rules regarding registered office of a Limited Liability Partnership (LLP) and change therein as per provisions of the Limited Liability Partnership Act, 2008. **(Dec' 21)**



Every LLP shall have a registered office to which all communications and notices may be addressed and where they shall be received.

A document may be served on an LLP or a partner or designated partner thereof by sending it by post under a certificate of posting or by registered post or by any other manner, as may be prescribed, at the registered office and any other address specifically declared by the LLP for the purpose in such form and manner as may be prescribed.

An 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.

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 2000, but which may extend to 25000.



Discuss the conditions under which LLP will be liable and not liable for the acts of the partner. (Nov' 19)



As per section 27(2) of the LLP Act, 2008, the LLP is liable if a partner of an LLP is liable to any person as a result of a wrongful act or omission on his part in the course of the business of the LLP or with its authority.

However under section 27(1) of the LLP Act, 2008, an LLP is not bound by anything done by a partner in dealing with a person if—

- i. the partner in fact has no authority to act for the LLP in doing a particular act; and
- ii. the person knows that he has no authority or does not know or believe him to be a partner of the LLP.



State the circumstances under which a LLP and its partners may face unlimited liability under the Limited Liability Partnership Act, 2008. (Jan' 21)



As per Section 30 of the Limited Liability Partnership Act, 2008, in case of fraud the LLP and its Partners may have an unlimited liability. Such unlimited liability shall arise in the event of an act carried out by an LLP or any of its partners –

- i. with intent to defraud creditors of the LLP,
- ii. or any other person, or
- iii. for any fraudulent purpose.

The liability of the LLP and partners who acted with intent to defraud creditors or for any fraudulent purpose shall be unlimited 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.

Where LLP, Partner or employee of LLP has conducted the affairs of the LLP in fraudulent manner, the LLP and any such partner or employee shall be liable to pay compensation to any such person who has suffered any loss by reason of such conduct.



What is the procedure for maintenance of books of account, other records and audit of Limited Liability Partnership under LLP Act, 2008? (RTP Nov' 22)



Maintenance of books of account, other records and audit, etc. (Section 34 of LLP Act, 2008):

The LLP shall maintain such proper books of account as may be prescribed relating to its affairs for each year of its existence on cash basis or accrual basis and according to double entry system of accounting and shall maintain the same at its registered office for such period as may be prescribed.

Every LLP shall, within a period of six months from the end of each financial year, prepare a Statement of Account and Solvency for the said financial year as at the last day of the said financial year in such form as may be prescribed, and such statement shall be signed by the designated partners of the LLP.

Every LLP shall file within the prescribed time, the Statement of Account and Solvency prepared with the Registrar every year in such form and manner and accompanied by such fees as may be prescribed.

The accounts of LLP shall be audited in accordance with such rules as may be prescribed.



Explain the circumstances in which LLP may be wound up by Tribunal under the LLP Act, 2008. **(RTP May' 20)/ (MT May' 20)/ (Nov' 20)/ (MT)/ (MT)**



Under section 64 of the LLP Act, 2008 an LLP may be wound up by the Tribunal in the following cases:

- i. if the LLP decides that LLP be wound up by the Tribunal;
- ii. if, for a period of more than six months, the number of partners of the LLP is reduced below two;
- iii. if the LLP is unable to pay its debts;
- iv. if the LLP has acted against the interests of the sovereignty and integrity of India, the security of the State or public order;
- v. 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
- vi. if the Tribunal is of the opinion that it is just and equitable that the LLP be wound up.