

Limited Liability Partnership Act, 2008

Assignment

Q. No.	Questions and Answers	Marks
1	What do you mean by Designated Partner? Whether it is mandatory to appoint a designated partner in an LLP? (ICAI SM, RTP May 2021, RTP Nov. 2020)	3
Ans.	As per the provision of the Limited Liability Partnership Act, 2008: - 1. Every LLP shall have <u>at least two designated partners</u> who are individuals, and at least one of them shall be a <u>resident in India</u> . 2. Resident in India means a person who has stayed in India for a period of <u>not less than 120 days</u> during the <u>immediately preceding one year</u> . 3. If in LLP, all the partners are <u>body corporates</u> or one or more partners are <u>individuals</u> and <u>body corporates</u> , at least <u>two individuals</u> , who are partners of such LLP or <u>nominees</u> of such body corporates, shall act as <u>designated partners</u> .	3
2	State the circumstances in which the Tribunal may order for the winding up of an LLP. (ICAI SM, Nov. 2020, RTP May 2020)	6
Ans.	As per the provision of the Limited Liability Partnership Act, 2008, circumstances in which the Tribunal may order for the winding up of an LLP are: - 1) <u>LLP decides that LLP be wound up by the Tribunal</u> . 2) If, for a period of <u>more than six months</u> , the <u>number of partners</u> of the LLP is <u>reduced below two</u> . 3) LLP is <u>unable to pay its debts</u> . 4) LLP has <u>acted against the interests</u> of the <u>sovereignty</u> and <u>integrity</u> of India, the <u>security</u> of the State or public order. 5) LLP has made a <u>default in filing with the Registrar</u> the Statement of Accounts & Solvency or Annual Return for any five consecutive financial years. 6) The Tribunal is of the opinion that it is <u>just and equitable</u> that the LLP be wound up.	6
3	Explain the essential elements to incorporate an LLP under the Limited Liability Partnership Act, 2008. (ICAI SM, May 2018)	6
Ans.	As per the provision of the Limited Liability Partnership Act, 2008, the following elements are essential to form an LLP in India: 1) Completion and submission of the <u>incorporation document along with a prescribed statement</u> in a prescribed form with the Registrar electronically. 2) There shall be <u>at least two persons as the partners</u> for the incorporation of the LLP (Individuals or body corporates) 3) An LLP shall have a <u>registered office</u> to which all communications will be made and received. 4) There shall be a <u>minimum of two individuals as designated partners of the LLP</u> who will be responsible for a number of duties, including doing all acts, matters and things as are required to be done by the LLP. <u>At least one of them should be a resident in India</u> . 5) The individual or the nominee of body corporate, who is intending to be appointed as a designated partner of LLP, shall hold a <u>Designated Partner Identification Number (DPIN)</u> allotted by MCA (Ministry of Corporate Affairs).	6

	6) A <u>partnership agreement</u> shall be executed between the partners or between the LLP and its partners. In the absence of any agreement, the <u>provisions given in the First Schedule of LLP Act, 2008</u> shall be applicable.	
4	What are the effects of registration of LLP? (ICAI SM, RTP Nov. 2019)	4
Ans.	On the registration of an LLP, the 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 such other acts and things as body corporates may lawfully do.	4
5	“LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership.” Explain. (ICAI SM, May 2019, May 2022 RTP, July 2021)	5
Ans.	As per the provision of the Limited Liability Partnership Act, 2008, LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership. 1) Limited Liability: <u>Every partner of an LLP is the agent of the LLP</u> , but not of other partners. The liability of the partners will be <u>limited to their agreed contribution</u> in the LLP, while the LLP itself will be liable for the full extent of its assets. 2) The flexibility of a partnership: The LLP allows its members the <u>flexibility of organizing their internal structure as a partnership</u> based on a mutually arrived agreement. The LLP form enables entrepreneurs, professionals and enterprises to form <u>commercially efficient entity</u> suited to their requirements.	5
6	What are the steps for incorporating an LLP? (Nov. 2018)	6
Ans.	1. Name reservation: a) The first step in the incorporation of an LLP is to <u>reserve the name of the LLP</u> . b) The applicant has to file an <u>e-form 1</u> with the Registrar to reserve the name of the LLP. 2. Incorporation: a) After reserving the name, the applicant has to file <u>e-form 2</u> for incorporating the LLP. b) <u>Details contained in e-form 2:</u> • Details of LLP proposed to be incorporated. • Details of partners and designated partners. • Consent of such partners and designated partners to act as partners and designated partners. 3. LLP Agreement: a) An LLP agreement shall be mandatorily executed as per the LLP Act, 2008. b) The LLP agreement shall be filed in <u>e-form 3</u> within <u>30 days of the incorporation of the LLP</u> .	6
7	Who is the individual who shall not be capable of becoming a partner of an LLP? (RTP Nov. 2019)	3
Ans.	Any individual or body corporate may be a partner in an LLP. However, he not be capable of becoming a partner of an LLP if: -	3

	<p>a) He has been found to be of <u>unsound mind</u> by a court of competent jurisdiction, and the finding is in force;</p> <p>b) He is an <u>undischarged insolvent</u>; or</p> <p>c) He has applied to be <u>adjudicated as insolvent</u>, and his application is pending.</p>	
8	Discuss the conditions under which an LLP shall be liable for the acts of the partner. (Nov. 2019)	5
Ans.	<p>As per the provision of the Limited Liability Partnership Act, 2008: -</p> <p>1) The LLP is <u>not bound</u> by anything done by a partner in dealing with a person if:</p> <p>a) the partner has <u>no authority to act for the LLP</u> in doing a particular act; and</p> <p>b) the person knows that he has no authority or does not know or believe him to be a partner of the LLP.</p> <p>2) The LLP is liable if a partner of the LLP is <u>liable to any person as a result of a wrongful act or omission</u> on his part <u>in the course of the business</u> of the LLP or with its authority.</p> <p>3) An obligation of the LLP shall be solely the <u>obligation of the LLP</u>.</p> <p>4) The liabilities of the LLP shall be met out of the <u>property of the LLP</u>.</p>	5
9	Explain any four features of a Limited Liability Partnership. (ICAI SM)	4
Ans.	<p>As per the provision of the Limited Liability Partnership Act, 2008, features of LLP are: - (Any four features)</p> <p>1) LLP is a body corporate: LLP is a <u>separate legal entity</u>, and all assets and liabilities of LLP <u>belong to LLP</u>, not to its partners.</p> <p>2) Perpetual Succession: LLP is created by the <u>process of law</u>, and it can be destroyed by the process of law only. <u>Death, insanity</u>, etc., of its partners <u>cannot affect the existence or continuity</u> of LLP.</p> <p>3) Mutual Agency: Partners of LLP are the <u>agents of LLP</u> only, <u>not of other partners</u>. Acts done by partners are <u>bounded on LLP</u> only, <u>not on other partners</u> directly.</p> <p>4) Formation of Agreement: Agreement between partners under LLP Act decides <u>mutual rights and duties</u> of the partners. In the absence of agreement, mutual rights and duties shall be governed by provisions of the <u>Limited Liability Partnership Act, 2008</u>.</p> <p>5) Common Seal: It is <u>not mandatory</u> for a company to have a common seal. If there is a common seal of LLP, it shall be under the <u>custody of some responsible officer</u>. The common seal shall be affixed in the presence of <u>at least two designated partners</u> of LLP.</p> <p>6) Limited Liability: Since <u>every partner is an agent of LLP</u> only, the liability of partners shall be limited to their <u>agreed contribution</u> in LLP.</p> <p>7) Management of Business: Partners of LLP are <u>entitled to manage the business</u>. Only <u>designated partners</u> are <u>responsible for legal compliances</u>.</p> <p>8) Minimum and Maximum number of Partners: <u>Minimum number of designated partners</u> should be <u>2</u>, one of whom must be a <u>resident of India</u>. There is <u>no limit</u> to the maximum number of partners in LLP.</p> <p>9) Business for profits only: While forming LLP, the intention should be to <u>earn profits</u>. LLP <u>cannot</u> be formed for <u>charitable</u> or <u>non-economic purposes</u>.</p> <p>10) Investigation: The <u>Central Government</u> has the powers to <u>order the investigation</u> on LLP and its affairs by appointing a <u>competent authority</u>.</p>	1 Mark for each point (Any four)

	<p>11) Compromises or Arrangements: Any <u>compromises or arrangements</u>, including <u>merger and amalgamation</u>, shall be in accordance with the provisions of the <u>LLP Act, 2008</u>.</p> <p>12) Conversion into LLP: A firm, <u>private</u> or an <u>unlisted public company</u> would be allowed to be <u>converted</u> into LLP in accordance with the provisions of the <u>LLP Act, 2008</u>.</p> <p>13) E-filing of Documents: Every form or application, or document needed to be filed, shall be filed in a <u>computer-readable</u> electronic form on the website www.mca.gov.in. The documents filed must be <u>authenticated</u> by a partner or designated partner of LLP by the use of the <u>electronic</u> or <u>digital signature</u>.</p> <p>14) Foreign LLP: <u>Foreign LLP</u> is LLP <u>incorporated outside India</u>, which established a <u>place of business within India</u>. It can become a partner in an Indian LLP.</p>	
10	State the circumstances under which an LLP and its partners may face unlimited liability under the Limited Liability Partnership Act, 2008. (Jan. 2021)	4
Ans.	<p>1) As per the provisions of the Limited Liability Partnership Act, 2008, <u>in case of fraud</u>, an act carried out by a LLP, or any of its partners, with an intent to defraud creditors of the LLP or any other person, or for any fraudulent purpose, <u>the liability of the LLP and such partners shall be unlimited</u> for all or any of the debts or other liabilities of the LLP. However, if the LLP proves that such act, which is carried out by a partner, is carried out without the knowledge or authority of the LLP, then only such partner shall be liable.</p> <p>2) Punishment: Every person, who was knowingly a party to such fraud, shall be punishable with:</p> <ul style="list-style-type: none"> • <u>imprisonment</u> for a term which may extend to 5 years, and • with <u>fine</u> which shall not be less than ₹50,000 but which may extend to ₹5 Lakhs. <p>3) If an <u>LLP</u> or any of its <u>partner</u> or its <u>designated partner</u> or its <u>employee</u> has conducted the affairs of the LLP in a fraudulent manner, then such LLP and any such partner or designated partner or employee shall be <u>liable to pay compensation</u> to any person who has suffered any loss or damage by reason of such conduct (without any prejudice to criminal proceedings). However, such LLP shall not be liable if any such partner or designated partner or employee has acted fraudulently without knowledge of the LLP.</p>	4
11	What is the procedure for changing the name of Limited Liability Partnership under the LLP Act, 2008? (RTP May 2020)	4
Ans.	<p>1) As per the provisions of the Limited Liability Partnership Act, 2008, if a limited liability partnership is registered by a name or changes its name, which is <u>identical with or too nearly resembles</u> to:</p> <ol style="list-style-type: none"> a) the name of <u>any other LLP or a company</u>; or b) a <u>registered trade mark of a proprietor</u>, <p>then on an <u>application</u> of such limited liability partnership or proprietor or a company, the Central Government may <u>direct such limited liability partnership to change its name or new name within a period of 3 months from the date of issue of such directions</u>. It has been provided that an <u>application of the proprietor of the registered</u></p>	4

	<p><u>trademark</u> shall be made <u>within a period of 3 years</u> from the date of incorporation of such LLP or change of name of such LLP.</p> <p>2) If the limited liability partnership changes its name, it shall, <u>within a period of 15 days</u> from the date of such change, give notice of the change to Registrar along with the order of the Central Government. The Registrar shall <u>carry out necessary changes in the certificate of incorporation</u> and <u>within 30 days</u> of such change in the certificate of incorporation, such LLP shall change its name in the LLP agreement.</p> <p>3) If the limited liability partnership <u>defaults</u> in complying with any direction given by the Central Government, then <u>the Central Government shall allot a new name to the limited liability partnership</u>. The Registrar shall enter such allotted new name in the Register of Limited Liability Partnerships in place of the old name and <u>issue a fresh certificate of incorporation</u> with new name, which the limited liability partnership shall use thereafter.</p>	
12	Examine the Concept of LLP. (ICAI SM)	5
Ans.	<p>LLP is a new form of <u>legal business entity with limited liability</u>. It is an <u>alternative corporate business vehicle</u> that gives the benefits of <u>limited liability</u> but allows its partners the <u>flexibility of organizing their internal structure</u> as a traditional partnership.</p> <p>Concept of the Limited Liability Partnership:</p> <ul style="list-style-type: none"> ✓ The LLP can <u>continue its existence irrespective of changes in partners</u>. It is capable of entering into a contract and holding property in its own name. ✓ The LLP is a <u>separate legal entity</u>, is liable to the full extent of its assets, but the liability of the partners is limited to the agreed contribution in the LLP. ✓ In an LLP, <u>no partner is liable</u> on account of the independent or unauthorized actions of other partners. ✓ <u>Mutual rights and duties</u> of the partners within an LLP are governed by an agreement between the partners. ✓ Since LLP contains elements of both '<u>a corporate structure</u>' as well as '<u>a partnership firm structure</u>', an LLP is called a hybrid between a company and a partnership. 	5
13.	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. 2021)	5
Ans.	<p>As per provisions of the Limited Liability Partnership Act, 2008:</p> <ol style="list-style-type: none"> 1) Every LLP shall have a registered office to which communications and notice may be addressed and where they shall be received. 2) A document may be served on an LLP or partner or designated partner by a registered post or by any other manner at the registered office of the LLP. 3) An LLP may change the place of its registered office by filing a notice of such change with the Registrar in such form and manner, as may be prescribed. 4) If any default is made in complying with the requirements of this section, the limited liability partnership and its every partner shall be liable to a penalty of <u>₹500 for each day</u> during which the default continues, subject to a <u>maximum of ₹50,000</u> for the limited liability partnership and its every partner. 	5
14	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	4

		between the two forms of business highlighting the compliances and other legal formalities. [Any 4 points] (Nov 2021 RTP)		
Ans.	Basis	LLP	Partnership Firm	1 Mark for each point [Any 4 points]
	Regulating Act	The Limited Liability Partnership Act, 2008.	The Indian Partnership Act, 1932.	
	Body corporate	It is a body corporate.	It is not a body corporate,	
	Separate legal entity	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	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.	
	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.	
	Name	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	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.	
	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.	
	Designated partners	At least two designated partners and atleast one of them shall be resident in India.	There is no provision for such partners under the Partnership Act, 1932.	
Common seal	It may have its common seal as its official signature.	There is no such concept in partnership.		

	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.	
	Annual filing of documents	LLP is required to file annually Statement of Account & Solvency and Annual Return with the Registrar of LLP every year.	Partnership firm is not required to file any annual document with the Registrar of Firms.	
15	What is the procedure for maintenance of books of account, other records and audit of Limited Liability Partnership under LLP Act, 2008? (Nov 2022 RTP)			4
Ans.	<p>1) As per the provisions of the Limited Liability Partnership Act, 2008, the LLP shall maintain such proper books of account as may be prescribed relating to its affairs for each year on <u>cash basis or accrual basis</u> and according to <u>double entry system of accounting</u>. The LLP shall <u>maintain its books of account at its registered office</u> for such period as may be prescribed.</p> <p>2) Every LLP shall, <u>within 6 months from the end of each financial year</u>, prepare a <u>Statement of Account and Solvency</u> for the said financial year in such form as may be prescribed, and such statement shall be signed by the designated partners of the LLP.</p> <p>3) Every LLP shall, within the prescribed time, <u>file the Statement of Account and Solvency with the Registrar</u> every year in such form and manner and accompanied by such fees as may be prescribed.</p> <p>4) The accounts of LLP shall be <u>audited in accordance with such rules</u> as may be prescribed.</p>			4